

THE SECRETARY OF THE INTERIOR  
WASHINGTON

JUL 28 2017

Ms. Mary Neumayr  
Chief of Staff  
Council on Environmental Quality  
The White House  
Washington, DC 20500

Dear Ms. Neumayr:

As directed by Executive Order (EO) 13783, I am pleased to submit to you the Department of the Interior's (Interior) draft final report on agency actions that potentially burden the safe and efficient development of domestic energy resources. Interior has reviewed all existing regulations, orders, guidance documents, policies, instructions, notices, implementing actions, and any other similar actions related to or arising out of EO 13783.

Pursuant to the plan I submitted on May 17, 2017, I have taken specific actions in support of EO 13783 to promote development of our Nation's energy resources, while avoiding regulatory burdens that constrain economic growth. A few of these actions are highlighted below.

- 1) On July 25, 2017, the Bureau of Land Management (BLM) published a proposed rule to rescind the 2015 rule, "Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands."
- 2) The BLM reviewed the 2016 final rule entitled, "Oil and Gas; Waste Prevention, Production Subject to Royalties, and Resource Conservation" and found it inconsistent with the policy stated in EO 13783 that "it is in the national interest to promote clean and safe development of our nation's vast energy resources, while at the same time avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation." The BLM is proposing to suspend certain requirements of the rule and postpone others to reduce the regulatory burden on the energy industry. The BLM also plans to modify the rule to eliminate overlap with Environmental Protection Agency (EPA) provisions and incentivize the capture of associated gas production from oil wells and other sources.
- 3) The Bureau of Ocean Energy Management has been developing a new five-year Outer Continental Shelf oil and gas leasing program to spur safe and responsible energy development offshore. On July 13, 2017, I announced that Interior will offer 75.9 million acres offshore Texas, Louisiana, Mississippi, Alabama, and Florida for oil and gas exploration and development.

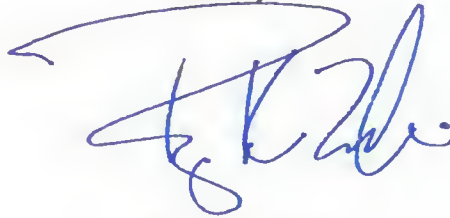
- 4) The Bureau of Safety and Environmental Enforcement (BSEE) is reviewing its well control and blow-out preventer rule that published April 29, 2016. The BSEE is considering several revisions to the rule that would potentially save the industry \$4 billion over the course of 10 years.
- 5) The Office of Natural Resources Revenue (ONRR) determined that its 2017 coal valuation rule unnecessarily burdened the development of Federal and Indian coal beyond what was necessary to protect the public interest. The ONRR plans to publish a rule repealing the rule in its entirety in August 2017.
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Prior to reaching a final determination regarding any proposed action, Interior may be required to comply with the notice and comment requirements of the Administrative Procedure Act or other laws and regulations, and will weigh the results of such procedures accordingly in its decision making process.

Interior continues to review regulations and policies that could burden the development or use of domestically produced energy resources. Interior has already taken actions to encourage responsible domestic energy development and will continue to remove unnecessary burdens.

I look forward to submitting our final report in September.

Sincerely,

A handwritten signature in blue ink, appearing to read 'R. Zinke', with a large, sweeping flourish above the name.

Ryan K. Zinke  
Secretary of the Interior



# TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.

HEADQUARTERS: P.O. BOX 33695 DENVER, COLORADO 80233-0695 303-452-6111

March 31, 2017

The President  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Dear Mr. President:

On behalf of Tri-State Generation and Transmission Association, Inc. and the 43 member systems we serve, I want to thank you for signing *Presidential Executive Order on Promoting Energy Independence and Economic Growth*. We appreciate your support of the clean and safe development of the nation's energy resources and your understanding of how federal regulations, like the Environmental Protection Agency's Clean Power Plan, can negatively impact these efforts. We agree there is a better way to achieve environmental goals.

Tri-State is the wholesale power supplier, operating on a not-for-profit basis, to 43 electric cooperatives and public power districts that serve more than one million consumers throughout nearly 200,000 square-miles of Colorado, Nebraska, New Mexico and Wyoming. We believe that affordable and reliable power, responsibly generated and delivered, is the lifeblood of the farms, ranches, small towns and businesses that our members serve.

As a cooperative, Tri-State's operations are cost-based and all the expense of complying with regulations are passed on to our members, a fact the EPA ignored when crafting the Clean Power Plan and why Tri-State and other cooperatives were active in the rulemaking process and challenged the rule in court. Since it was proposed, Tri-State has argued the Clean Power Plan was unlawful, unworkable, and should be abandoned by the EPA. We argued that the stakes are too high to risk implementing legally flawed, poorly conceived regulations that have the real potential to harm our members and rural communities across the West.

If the Clean Power Plan is ultimately rescinded – or significantly revised to address our concerns – it would tremendously benefit our members, which rely on fossil fuel generation as a source of affordable and reliable power. Our employees that work at our plants and coal mines, as well as the communities in which they live, would also gain a measure of reprieve.

The executive order also addresses other federal regulations and policies we have expressed concerns with either during the rulemaking processes or through legal challenges. Specifically, we support modifications to methodologies used under the National Environmental Policy Act (NEPA), which currently calls for unreasonable requirements for transmission lines and mining facilities. We also support your order ending the controversial coal leasing moratorium put in

AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

A Touchstone Energy Cooperative 

CRAIG STATION  
P.O. BOX 1307  
CRAIG, CO 81626-1307  
970-824-4411

ESCALANTE STATION  
P.O. BOX 577  
PREWITT, NM 87045  
505-876-2271

NUCLA STATION  
P.O. BOX 698  
NUCLA, CO 81424-0698  
970-864-7316



The President  
March 31, 2017  
Page 2

place by the previous administration. Tri-State looks forward to working constructively with your administration to help craft workable and effective regulations.

In the meantime, Tri-State will continue to invest in the efficiency of our facilities, maintain best practices and diversify our generation portfolio. In 2016, 26 percent of the energy delivered by the association and our member systems to their members/consumers came from renewable resources, but fossil fuels remain an important part of the association's diverse portfolio that keeps energy affordable and reliable.

With that in mind, we believe your actions are a step in the right direction for the country, our members and the rural consumers they serve. We thank you for your support of rural America.

Respectfully,

Micheal S. McInnes  
Chief Executive Officer

MSM/cm

cc: The Honorable Ryan Zinke, Secretary of the Interior  
The Honorable Rick Perry, Secretary of Energy  
The Honorable Scott Pruitt, Administrator of the Environmental Protection Agency

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**TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.**

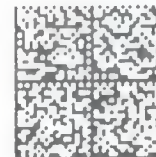
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The Honorable Ryan Zinke  
Secretary of the Interior  
U.S. Department of the Interior  
1849 C Street, N.W.  
Washington, DC 20240

A Touchstone Energy Cooperative



20240-





THE SECRETARY OF THE INTERIOR

WASHINGTON

JUL 28 2017

The Honorable Mike Pence  
The Vice President of the United States  
Washington, DC 20501

Dear Mr. Vice President:

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considering several revisions to the rule that would potentially save the industry \$4 billion over the course of 10 years.

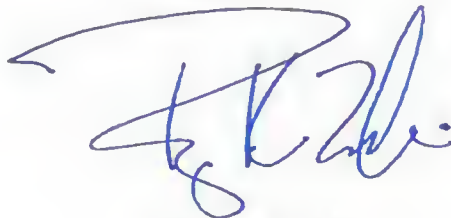
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Ryan K. Zinke  
Secretary of the Interior



THE SECRETARY OF THE INTERIOR  
WASHINGTON

**JUL 28 2017**

The Honorable Mick Mulvaney  
Director  
Office of Management and Budget  
Washington, DC 20501

Dear Mr. Mulvaney:

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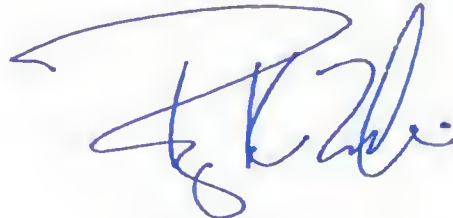
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Ryan K. Zinke  
Secretary of the Interior



THE SECRETARY OF THE INTERIOR  
WASHINGTON

JUL 28 2017

Mr. Gary D. Cohn  
Assistant to the President for Economic Policy  
The White House  
Washington, DC 20500

Dear Mr. Cohn:

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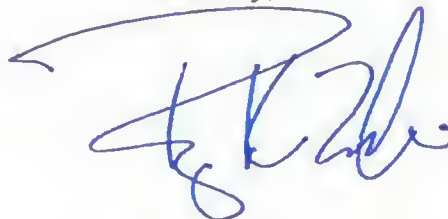
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Ryan K. Zinke  
Secretary of the Interior



THE SECRETARY OF THE INTERIOR  
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JUL 28 2017

Mr. Andrew Bremberg  
Assistant to the President for Domestic Policy  
The White House  
Washington, DC 20500

Dear Mr. Bremberg:

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## **Indian Affairs’ Input into July Draft E.O. 13783 Energy Report**

### **I. Executive Summary**

Indian Affairs is focusing on two actions to alleviate the requirements of regulations that burden development of domestic energy resources. Both of these actions relate to Indian energy.

### **II. Recommendations for Alleviating or Eliminating Burdensome Actions**

#### **A. Climate Change Actions**

Not applicable.

#### **B. Mitigation Actions**

Not applicable.

#### **C. Coal-Related**

Not applicable.

#### **D. Indian Energy Actions**

##### **Underutilization of Tribal Energy Resource Agreements (TERAs)**

- 1. Description.** Tribal Energy Resource Agreements (TERAs) are authorized under Title V of the Energy Policy Act of 2005 (Act). A TERA is a means by which a Tribe could be authorized to review, approve, and manage business agreements, leases, and rights-of-way pertaining to energy development on Indian trust lands, absent approval of each individual transaction by the Secretary of the Interior. The Department promulgated TERA regulations in 2008 at 25 CFR part 224. TERAs offer the opportunity to promote development of domestically produced energy resources on Indian land; however, twelve years after the passage of the Act and nine years after the issuance of TERA regulations, not one tribe has sought the Department’s approval for a TERA. One theory asserted by at least one Tribe as to the failure of this legislation is the Act does not address precisely how much federal oversight would disappear for tribes operating under TERAs. Specifically, the Department had not defined the term “inherently federal functions” that the Department will retain following approval of a TERA. This term appears in the Department’s regulations at 25 CFR §§ 224.52(c) and 224.53(e)(2), but not in the Act. Without some assurance as to the benefits (in terms of less federal oversight) a Tribe would receive through clarification of “inherently federal functions,” Tribes have no incentive to undergo the intensive process of applying for a TERA. Clarification of this phrase would also address Recommendation 5 of GAO 15-502, which directed the Department to



“provide additional energy development-specific guidance on provisions of TERA regulations that tribes have identified to Interior as unclear.”

2. **Opportunities to Address Burden or Other Issues of Concern.** Indian Affairs has been working closely with the Office of the Solicitor to develop guidance on how the Department will interpret the term “inherently federal functions.” It is expected that by providing this certainty as to the scope of federal oversight, Tribes will better be able to justify the process of applying for a TERA. Indian Affairs expects to have the guidance finalized and available on its website by October 2017.
3. **Anticipated Benefits.** Indian Affairs anticipates that the benefits of this action will be to promote the use of TERAs, which will both save Tribes the time and resources necessary to seek and obtain Departmental approval of each transaction related to energy development on Indian land, and will help ease the Department’s workload by eliminating the need for Departmental review of each individual transaction.  
*[quantify benefits by filling in attached spreadsheet]*
4. **Measuring Success.** The reduction in burden will be measured by the number of Tribes that choose to obtain TERAs. Once each Tribe obtains a TERA, the Department will work with the Tribe to estimate savings in terms of time and resources.
5. **Interim Methods.** Because Indian Affairs expects to make the guidance available in the near future, no interim methods are planned.

### **Indian Trader Regulations**

1. **Description.** Energy development on Indian land is currently subject to overlapping and multi-jurisdictional regulations that creates economic uncertainty and undermines a Tribe’s ability to attract energy development. The regulatory uncertainty extends to whether a State or the Tribe has authority to regulate and tax even within the Tribe’s territory. State governments provide few services on Indian reservations, but impose taxes on natural resources, retail sales, and personal property (e.g., construction material). If Tribal governments impose a tax, the resulting dual taxation drives business away. If the Tribal government collects no tax, however, their Tribal communities suffer from inadequate infrastructure and fundamental services sovereign Tribal governments owe their citizens.
2. **Opportunities to Address Burden or Other Issues of Concern.** Revisions to the Indian Trader regulations, which implement broad authority to govern trade with Indians, would clarify that only Tribes have regulatory and tax jurisdiction within their reservation borders and on Indian land. The removal of this uncertainty will remove a major barrier to attracting businesses interested in developing the vast energy resources available on Indian land. Indian Affairs is pursuing an aggressive schedule of consulting with Tribes on a consultation draft of the revisions this summer, with a goal of issuing a proposed rule in early fall and finalizing this winter.

3. **Anticipated Benefits.** Indian Affairs is working on economic analyses to help quantify the benefits. Overall, the clarity provided by the regulations is expected to kick start outside investment in energy development on Indian land.
4. **Measuring Success.** Indian Affairs plans to measure success through close coordination with Tribes on the number of energy projects initiated following the effective date of the rule. Indian Affairs will review the effectiveness on at least an annual basis following the effective date of the rule.
5. **Interim Methods.** Because these barriers are largely due to uncertainty that can only be addressed through regulatory or legislative action, Indian Affairs has not identified any interim methods.

**E. Energy-Related Information Collections under the Paperwork Reduction Act**

Not applicable.

**F. Grant Programs**

Not applicable

**G. Restrictions in Acquisition Policy and Regulations**

Not applicable.

**H. Other Actions that Potentially Burden Development or Use of Energy**

Not applicable.

## **Memorandum**

**To:** Office of the Executive Secretariat

**Through:** Katharine S. MacGregor  
Acting Assistant Secretary, Land and Minerals Management

**From:** Michael D. Nedd  
Acting Director, Bureau of Land Management

**Subject:** BLM E.O. 13783 Energy Report

### **I. Executive Summary**

Pursuant to the Associate Deputy Secretary's June 28, 2017, memorandum, this report: 1) describes actions that the Bureau of Land Management (BLM) has identified that may burden the development or use of domestically produced energy resources, and 2) makes recommendations for alleviating such impediments.

The 17 actions discussed below represent a combination of rule rescissions, reviews of existing policy, promulgation of new policy or guidance, or similar actions, all of which aim to reduce burdens on energy producers.

The BLM will continue to pursue these agency actions, which cover a range of categories. These include, but are not limited to:

- **Climate Change:** (e.g., rescission of a BLM memo that transmits Council on Environmental Quality (CEQ) guidance on consideration of greenhouse gas emissions and the effects of climate change in National Environmental Policy Act (NEPA) reviews);
- **Mitigation:** (e.g., BLM is reviewing and revising the Bureau's manual section and handbook related to Mitigation, which provide direction on the use of mitigation, including compensatory mitigation, to support the BLM's multiple-use and sustained-yield mandates);
- **Coal:** (e.g., BLM is reviewing three coal-related instruction memos (IM 2014-156, IM 2017-035, and IM 2017-037), with the goal of updating or rescinding them); and
- **Oil and Gas:** (e.g., the BLM is moving forward with rescinding the Hydraulic Fracturing regulation).

A more detailed discussion of these and the other actions follows.

## II. Recommendations for Alleviating or Eliminating Burdensome Actions

### A. Climate Change Actions

Permanent Instruction Memorandum (Permanent IM) 2017-003 (Jan. 12, 2017) -- The CEQ Guidance on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews:

1. **Description.** This Permanent IM transmits the CEQ guidance on consideration of greenhouse gas (GHG) emissions and the effects of climate change in NEPA reviews, and provides general guidelines for calculating reasonably foreseeable direct and indirect GHG emissions of proposed actions.
2. **Opportunities to Address Burden or Other Issues of Concern.** As the CEQ guidance was withdrawn pursuant to Section 3 of Executive Order 13783, the BLM Permanent IM will be rescinded. The BLM will consider issuing new guidance to its offices on approaches for calculating reasonably foreseeable direct and indirect GHG emissions of proposed and related actions.
3. **Anticipated Benefits.** In addition to transmitting the CEQ guidance, the IM instructed BLM offices preparing NEPA analysis in support of oil, gas, and coal decisions to:
  - o quantify and disclose reasonably foreseeable direct and indirect GHG emissions;
  - o quantify downstream or end-use greenhouse gas emissions and compare GHG quantities across alternative scenarios; and
  - o determine the direct GHG emissions from extraction and the indirect GHG emissions from combustion of the resource. The calculation of indirect emissions is based on the proposed action and information about the likely resource production.

The IM instructed that if available data do not allow for a credible estimate of production, the NEPA analysis must contain an explanation of why the available data is not adequate to permit quantification, as well as a qualitative analysis of the emissions.

A re-issued IM would clarify that downstream or indirect effects may be difficult to quantify, especially when production or modeling information is not available (such as with a lease sale in an exploratory area). Clarified guidance would reduce or eliminate speculative NEPA analysis in such situations. It would also relieve BLM offices of attempting to quantify downstream emissions that are completely outside of the BLM's jurisdictional authority (e.g., refineries that process gas from a wide mix of sources, including non-Federal sources).

By addressing these burdens, the BLM can bring its policy guidance into compliance with Executive Order 13783, provide greater certainty for industry during the

environmental review process, and avoid the need to prepare unnecessary and speculative emissions scenarios.

4. **Measuring Success.** The success measure in issuing new guidance will be consistent approaches for considering GHG emissions in NEPA reviews.
5. **Interim Methods.** The BLM is developing an IM to replace Permanent IM 2017-003; this new IM will provide guidance on consideration of GHG emissions and the effects of climate change in NEPA reviews. The BLM is also developing a unified Air Resources Toolkit that can be used across all organizational levels to consistently calculate, as needed and appropriate, relevant air emissions for a variety of BLM resource management functions. Once available, this toolkit will expedite analysis of reasonably foreseeable GHG emissions associated with energy and mineral development. The BLM anticipates finalizing both the replacement IM and toolkit within the next two months.

## **B. Mitigation Actions**

Mitigation Manual Section (MS-1794) and Handbook (H-1794-1):

1. **Description.** The Mitigation Manual Section and Handbook provide direction on the use of mitigation, including compensatory mitigation, to support the BLM's multiple use and sustained yield mandates. The 2016 Manual and Handbook replaced several IMs (IM Numbers 2005-069, 2008-204, and 2013-14) issued by the BLM for the same purpose. The 2016 Manual and Handbook encourage identification of mitigation standards that seek to achieve "no net loss" or "net benefit" for resources that BLM has determined are important, scarce, sensitive, or that have a protective legal mandate. A "net benefit" standard may burden development or use of domestically produced energy resources and may be appropriate only in limited circumstances; for example, where it is voluntary or will clearly benefit BLM-managed resources, the states, local communities, industry, and other primary stakeholders.
2. **Opportunities to Address Burden or Other Issues of Concern.** This burden would be reduced or eliminated through revision of the Mitigation Manual and Handbook. Specifically, the BLM is contemplating developing a mitigation standard that is generally aligned with the concept of "no net loss." Other revisions, such as clarifying what resources require compensatory mitigation, and how to calculate the appropriate kind and amount of compensatory mitigation, may further reduce this potential burden.
3. **Anticipated Benefits.** Revisions to the Manual and Handbook that address the issues identified above are expected to provide greater predictability (internally and externally) with regards to determination of mitigation requirements, ease conflicts, and may reduce permitting/authorizations times.
4. **Measuring Success.** Measuring success would be largely quantitative. The BLM would continue to track impacts from land use authorizations and would also track



the type and amount of compensatory mitigation implemented and its effectiveness, preferably in a centralized database.

5. **Interim Methods.** The BLM is drafting an IM that provides interim direction regarding new and ongoing mitigation practices while the Manual and Handbook are being reviewed and revised. Use of the existing Manual and Handbook would continue, as modified and limited by this IM, until they are superseded.

BLM Manual 6220 – National Monuments, National Conservation Areas, and Similar Designations (07/13/2012)

1. **Description.** Manual 6220 provides guidance for managing BLM National Conservation Lands designated by Congress or the President as National Monuments, National Conservation Areas, and similar designations (NM/NCA) in order to comply with the designating Acts of Congress and Presidential Proclamations, Federal Land Policy and Management Act of 1976 (FLPMA), and the Omnibus Public Land Management Act of 2009 (16 U.S.C. 7202). Manual 6220 requires that when processing a new ROW application, the BLM will determine, to the greatest extent possible, through the NEPA process, the consistency of the ROW with the Monument or NCA's objects and values; consider routing or siting the ROW outside of the Monument or NCA; and consider mitigation of the impacts from the ROW. Land use plans must identify management actions, allowable uses, restrictions, management actions regarding any valid existing rights, and mitigation measures to ensure that the objects and values are protected. The manual requires that a land use plan for a Monument or NCA should consider closing the area to mineral leasing, mineral material sales, and vegetative sales, subject to valid existing rights, where that component's designating authority does not already do so.
2. **Opportunities to Address Burden or Other Issues of Concern.** A review of Manual 6220 to identify where clarity could be provided for mitigation, notification standards, and compatible uses, may potentially reduce or eliminate burdens. The BLM will review Manual 6220 following the proposed revisions to the BLM Mitigation Manual Section (MS-1794) and Handbook (H-1794-1) to ensure that Manual 6220 conforms to the BLM's revised mitigation guidance.
3. **Anticipated Benefits.** Addressing any potential issues, along with providing consistency with the BLM Mitigation Manual is expected to provide greater predictability (internally and externally), reduce conflicts, and may reduce permitting/authorizations times.
4. **Measuring Success.** Success will be measured in the BLM meeting legal obligations under the designating Act or Proclamation for each unit and the allowance of compatible multiple uses, consistent with applicable provisions in the designating Act or Proclamation.
5. **Interim Methods.** N/A

BLM Manual 6400 – Wild and Scenic Rivers, Policy and Program Direction for Identification, Evaluation, Planning, and Management (07/13/2012)

1. **Description.** Manual 6400 provides guidance for managing eligible and suitable wild and scenic rivers and designated wild and scenic rivers in order to fulfill requirements found in the Wild and Scenic Rivers Act (WSRA). Subject to valid existing rights, the manual states that minerals in any Federal lands that constitute the bed or bank or are situated within ¼ mile of the bank of any river listed under Section 5(a) are withdrawn from all forms of appropriation under the mining laws, for the time periods specified in Section 7(b) of the WSRA. The manual allows new leases, licenses, and permits under mineral leasing laws be made, but requires that consideration be given to applying conditions necessary to protect the values of the river corridor. For wild river segments, the manual requires that new contracts for the disposal of saleable mineral material, or the extension or renewal of existing contracts, should be avoided to the greatest extent possible to protect river values.
2. **Opportunities to Address Burden or Other Issues of Concern.** Manual 6400 will be reviewed following the proposed revisions to the BLM Mitigation Manual Section and Handbook to ensure that it conforms to the BLM revised mitigation guidance. Although the requirements for minerals and mineral withdrawals are legally mandated under the mining and mineral leasing laws in Sections 9(a) and 15(2) of the WSRA, Manual 6400 will be reviewed for opportunities to clarify discretionary decision-space.
3. **Anticipated Benefits.** Ensuring consistency with the BLM Mitigation Manual will foster greater predictability (internally and externally) with regards to determination of mitigation requirements, reduce conflicts, and may reduce permitting/authorizations times.
4. **Measuring Success.** Success will be measured in terms of compliance with the WSRA and identifying and allowing compatible multiple uses.
5. **Interim Methods.** *N/A*

BLM Manual 6280 – Management of National Scenic and Historic Trails and Trails under Study or Recommended as Suitable for Congressional Designation (09/14/2012)

1. **Description.** Manual 6280 provides guidance for managing trails under study, trails recommended as suitable, and congressionally designated National Scenic and Historic Trails to fulfill the requirements of the National Trails System Act (NTSA) and the Federal Land Policy and Management Act. Manual 6280 identifies mitigation as one way to address substantial interference with the natural resources and purposes for which a National Trail is designated.
2. **Opportunities to Address Burden or Other Issues of Concern.** Manual 6280 will be reviewed following the proposed revisions to the BLM Mitigation Manual Section and Handbook to ensure it conforms to the BLM revised mitigation guidance. Although many of the requirements are legally mandated under the National Trails System Act, Manual 6280 will be reviewed for opportunities to clarify any discretionary decision-space to reduce or eliminate burdens.
3. **Anticipated Benefits.** Addressing any potential issues, along with providing consistency with the BLM Mitigation Manual is expected to provide greater predictability (internally and externally) with regards to determination of mitigation

- requirements, reduce conflicts, and may reduce permitting/authorizations times.
4. **Measuring Success.** Success will be measured in terms of compliance with the NTSA while identifying and allowing compatible multiple uses.
  5. **Interim Methods.** N/A

### C. Coal-Related

Policy IM 2014-156, “Supplemental Guidance on Processing Royalty Rate Reduction Applications”

1. **Description.** This IM informs BLM State Directors that they must provide the BLM Washington Office (WO) with a justification when seeking a royalty rate reduction (RRR). A copy of the State’s draft decision must accompany the justification when requesting WO concurrence. Further, this IM augments and reiterates the existing policy for processing RRR applications. This policy has resulted in a delay to the processing of RRR applications as it has imposed an additional level of review of the BLM State Directors’ decisions. However, the BLM should assure that all RRRs meet the necessary regulatory standards, considering the public and Congressional scrutiny surrounding these actions.
2. **Opportunities to Address Burden or Other Issues of Concern.** Sec 6 of E.O. 13783 and Secretary’s Order 3348 ended the pause on coal leasing, ended the development of the coal Programmatic EIS, and called for the resumption of coal leasing under an improved coal leasing program. Policy IM 2014-156 is under review as a portion of the BLM response to E.O. 13783, Sec. 2, and Secretary’s Order 3349. Issues surrounding this policy, and possible changes to the policy, are also addressed in the Report to the Secretary on Recommendations for Streamlining the Federal Coal Leasing and Permitting Process. The Coal Report is being prepared to identify potential improvements and efficiencies to the coal leasing program, and is expected to be finalized within 30 days.
3. **Anticipated Benefits.** The BLM expects the primary benefits to be a more efficient process that maintains an adequate review of the RRR application and a greater measure of certainty for industry. Increased certainty will improve industry applicants’ confidence in making business decisions associated with planning for coal mining operations and production by significantly reducing the time it takes to receive the BLM’s response to an RRR application from years to either weeks or months.
4. **Measuring Success.** The BLM will measure success by reduced confusion and RRR application review timeframes, shortening the period of review from years to just months, assuming all necessary information has been provided by the proponent.
5. **Interim Methods.** There are no variances or waivers available to provide interim compliance on RRR requests. However, the BLM Headquarters and State Offices will work together to prioritize the existing RRR requests and develop an approach to ensure a more efficient review of existing RRR requests in view of existing staff, workload, and priorities, while concurrently developing the revised policy.

Policy IM 2017-035, “Publicly Accessible Bureau of Land Management Websites for Information Regarding Federal Coal Program Leasing, Exploration Licensing, and Royalty Rate Reductions”

1. **Description.** As a part of the BLM’s response to Executive Order 13783 and Secretarial Orders 3348 and 3349, the BLM is reviewing both IM 2017-035 and IM 2014-019 for rescission and replacement with the goal of responsibly reporting coal leasing information, while reducing or eliminating coal leasing program burdens that the prior policies may have created. Policy IM 2014-019, “Publicly Accessible Bureau of Land Management Websites for Coal Leasing Information,” responded to recommendations identified in GAO report 14-140. Policy IM 2017-035, which replaced IM 2014-019, was a product of public input during coal program listening sessions held during calendar year 2015. Policy IM 2017-035 directs BLM offices to post and update specified Federal coal program information on BLM publicly accessible websites, including: (1) information about Federal coal lease applications and leases, lease modification applications, and lease modifications; (2) information about exploration licensing applications and exploration licenses; (3) information about RRR applications; and (4) summary information on the Federal coal program.
2. **Opportunities to Address Burden or Other Issues of Concern.** The goal of IM 2017-035 was to lift the burden of responding to public and other requests for coal information, including Freedom of Information Act (FOIA) requests. The requirements in IM 2017-35 imposed new, unnecessary responsibilities and burdens on BLM staff responsible for responding to applications to explore and develop coal resources. The changes contemplated in the new policy will minimize and largely prevent the impacts to efficiently processing coal applications, while also addressing the need to publically post coal leasing information. The BLM expects to complete implementation of the policy in the first quarter of Fiscal Year (FY) 2018.
3. **Anticipated Benefits.** The new policy will free up BLM specialists and allow them to devote more time to core functions, such as coal application processing. As a result, the new policy will have direct benefits to coal applicants by reducing the time it takes to fully review their applications.
4. **Measuring Success.** The BLM will measure success by quantifying the number of time-consuming requests before and after public availability of the coal program information.
5. **Interim Methods.** This policy is internal to the BLM and results from the burden of responding to public and other requests for coal program information. As such, there are no compliance requirements specific to the coal program and coal proponents. During the interim period, the BLM will continue to have coal program staff use work hours to appropriately respond to each coal program information request that the BLM receives.

Policy IM 2017-037, “Waste Mine Methane”

1. **Description.** This IM is being reviewed for likely rescission in response to Executive Order 13783, and Secretarial Orders 3348 and 3349. Policy IM 2017-037 establishes national policies and processes for voluntary activities by operators to capture waste mine methane from underground coal or other solid mineral mines. The policy would allow waste mine methane to be put to productive use, including offering it for sale, instead of venting it to the atmosphere. All of the activities outlined in the policy are voluntary and would only be implemented if both the BLM and the mine operator agree. If the BLM and operator agree to implement the activities, the operator could incur additional costs. However, the BLM assumes that the operator would only choose to implement the activities if the benefits outweigh the costs.
2. **Opportunities to Address Burden or Other Issues of Concern.** Although this policy is based on voluntary collection of waste mine methane, the BLM has decided to rescind this IM, therefore alleviating any potential burden associated with collecting such waste. The BLM anticipates completing its review and revision of this policy in the first quarter of FY 2018.
3. **Anticipated Benefits.** The policy may encourage companies to increase the profitability of their operations, and result in the Federal government subsequently receiving additional gas production royalties; however, elimination of the policy will have a direct benefit in refocusing staff time from the workload associated with investigating the possibility of waste mine capture schemes with operators to processing coal applications..
4. **Measuring Success.** The BLM will measure success by the additional time available for BLM staff to process coal applications and conduct production accountability inspections.
5. **Interim Methods.** N/A

#### H. Other Actions that Potentially Burden Develop or Use of Energy

Regulation, Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands, 80 Fed. Reg. 16128

1. **Description.** The BLM's review of the Hydraulic Fracturing Rule responds to Executive Order 13783. The rule was intended to complement updates to existing regulations designed to ensure the environmentally responsible development of oil and gas resources and protection of other downhole zones on Federal and Indian lands. The BLM initiated the rule in response to the increasing use and complexity of hydraulic fracturing, coupled with advanced horizontal drilling technology. This technology has opened large portions of Federal and Indian lands to oil and gas development. However, some provisions the rule add unnecessary regulatory burdens that encumber energy production, constrain economic growth, and prevent job creation. Furthermore, the BLM's review of the 2015 final rule included a review of state laws and regulations which indicated that most states are either currently regulating or are in the process of regulating hydraulic fracturing. When the 2015 final rule was issued, 20 of the 32 states with currently existing Federal oil and gas leases had regulations addressing hydraulic fracturing. In the time since the



promulgation of the 2015 final rule, an additional 12 states have introduced laws or regulations addressing hydraulic fracturing. As a result, all 32 states with Federal oil and gas leases currently have laws or regulations that address hydraulic fracturing operations. In addition, some tribes with oil and gas resources have also taken steps to regulate oil and gas operations, including hydraulic fracturing, on their lands. The redundancy of the rule is furthered as portions of it also overlap with current Environmental Protection Agency provisions.

2. **Opportunities to Address Burden or Other Issues of Concern.** Due to ongoing litigation and a court-ordered stay, this regulation has never gone into effect. This regulation will be rescinded.
3. **Anticipated Benefits.** In states that currently regulate hydraulic fracturing, proponents will be under only one set of regulations and, as such, rescinding the Rule has the potential to reduce regulatory burdens by enabling oil and gas operations to occur under one set of regulations, rather than two. Because this was a controversial rulemaking that resulted in litigation filed by states and industry, pulling this rule back may result in additional interest in oil and gas development on public lands, especially under higher commodity prices.
4. **Measuring Success.** Since the regulation was never implemented, there is no prior experience to use as a baseline for measuring success. The situation will be status quo with the existing regulations that are currently in place. Economic analysis of the rescission of this policy will provide information on the likely costs to the oil and gas industry that were avoided as a result of not putting the rule in place.
5. **Interim Methods.** The interim state is the status quo of the existing regulations. These are well-understood regulations regarding hydraulic fracturing and no particular variances, waivers or interim compliance measures are required.

Regulation, Oil and Gas; Waste Prevention, Production Subject to Royalties, and Resource Conservation, 81 Fed. Reg. 83008

1. **Description.** The “Venting & Flaring Rule,” formally known as the “Waste Prevention, Production Subject to Royalties, and Resource Conservation” rule, replaced the requirements related to venting, flaring, and royalty-free use of gas contained in the 1979 “Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases, Royalty or Compensation for Oil and Gas Lost” (NTL-4A). The BLM codified the new rule at new 43 CFR subparts 3178 and 3179. In response to Executive Order 13783, the BLM is reviewing this rule to determine where greater efficiencies can be gained and in light of potential burdens to industry. This recent rulemaking includes provisions to make regulatory and statutory authority consistent with respect to royalty rates that may be levied on competitively offered oil and gas leases on Federal lands. Some provisions of the rule add regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation. Portions of the rule also overlap with current Environmental Protection Agency (EPA) provisions.

2. **Opportunities to Address Burden or Other Issues of Concern.** To reduce the regulatory burden on the energy industry, the BLM is revising the regulation to delay the phased-in implementation dates. This will provide industry additional time to plan for and engineer responsive infrastructure modifications that will comply with the regulation. The BLM expects to complete the revision of the regulation in the fourth quarter of FY 2018. Further, the BLM plans to modify the existing rule to eliminate overlap with EPA provisions and incentivize the capture of associated gas production from oil wells and other fugitive gas sources from production that occurs on Federal and Indian lands.
3. **Anticipated Benefits.** Because the revised regulation will provide significant additional phase-in time to oil and gas operators, the BLM expects industry to have sufficient time to design and acquire compliant infrastructure that will lower the cost of compliance and spread that cost over more time.
4. **Measuring Success.** The BLM will measure success in reducing the burdens resulting from the Venting and Flaring Rule to industry, and will work with industry to develop metrics, including key timelines or benchmarks, and the reduction of flaring from Federal and Indian lands over time.
5. **Interim Methods.** The completed regulation provided a phase-in period for waste prevention requirements which has not expired. The revised regulation provides for a longer phase-in of the waste prevention requirements. No additional variances or waivers of interim measures are needed beyond those provided in the regulation.

Policy, Oil and Gas; IM 2010-117, “Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews”

1. **Description.** The BLM has identified Policy IM 2010-117 for review under the directives provided by Executive Order 13783. This policy will be replaced with revised guidance for the purpose of establishing greater efficiencies in the oil and gas leasing process. Policy IM 2010-117 established a process for leasing oil and gas resources on Federal lands. The BLM intended the IM to reduce the backlog of unissued leases. However, the IM has resulted in longer time frames in analyzing and responding to protests and appeals, as well as longer lead times for the BLM to clear and make available parcels for oil and gas lease sales. It has also resulted in increased workload and staffing needs to conduct additional upfront environmental analysis.
2. **Opportunities to Address Burden or Other Issues of Concern.** The BLM has undertaken an effort to revise and reform its leasing policy and to streamline the leasing process, from beginning (i.e. receipt of an Expression of Interest) to end (competitively offering the nominated acreage in a lease sale). Under existing policies and procedures, the process can take up to 16 months (and sometimes longer) from the time lands are nominated to the time a lease sale occurs. The BLM is examining ways to significantly reduce this time by as much as 8-10 months. The BLM plans to complete revisions to the leasing process in the first quarter of FY 2018.

3. **Anticipated Benefits.** A shorter period from nomination to sale will reduce the number of nominated acres awaiting competitive sale at any given time and will increase industry certainty regarding the acreage it holds. As a result, industry will be able to plan for and execute exploration and production strategies earlier, and respond more effectively to changing market conditions.
4. **Measuring Success.** Reducing the average time from acreage nomination to lease sale will be BLM's measure of success. The BLM does not control what acreage industry nominates because market conditions can fluctuate dramatically; therefore, total nominated acreage awaiting sale is not likely to be a measure of success.
5. **Interim Methods.** Until the policy revisions are completed, the BLM is setting quarterly lease sale acreage targets to address the acreage currently nominated. The BLM is also identifying ways to augment staff support for potential sales in those offices with the greatest numbers of acres nominated.

Policy, Oil and Gas; IM 2013-101, "Oil and Gas Leasing Reform – Master Leasing Plans (MLPs)"

1. **Description.** This IM is under review by the BLM as directed by Executive Order 13783. The policy announced the incorporation of Master Leasing Plans (MLPs) in the oil and gas leasing process, further explained in Chapter V of the BLM Handbook H-1624-1, entitled "Planning for Fluid Mineral Resources." The IM establishes a process for integrating an MLP into the land use planning process. The BLM has extended this IM several times while the BLM completes the public scoping and analysis for MLPs. An unintended consequence of this policy has been that many areas open to oil and gas leasing have been deferred from leasing while they await the completion of the MLP process.
2. **Opportunities to Address Burden or Other Issues of Concern.** The BLM has undertaken an effort to revise the leasing reform and MLP policy and to re-establish the BLM Resource Management Plans (RMPs) as the source of lands available for fluid minerals leasing. The BLM is currently evaluating existing MLP efforts with the goal of ending this approach. The BLM expects to rescind this IM and complete the revision of the above BLM Handbook, as well as any other relevant BLM handbooks, in the first quarter of FY 2018.
3. **Anticipated Benefits.** Because this change will re-establish the RMP as the source of land allocation decisions for fluid minerals, it will result in less NEPA analysis and a shorter timeframe for acreage nominations to make it to a competitive lease sale. Since extra time and NEPA analysis adds to uncertainty for industry, removing these process-related steps has the effect of decreasing uncertainty.
4. **Measuring Success.** The primary measure of success in removing regulatory burden from the rescission of the MLP policy will be in the elimination of related nominated acreage sale deferral pending completion of NEPA. While there will continue to be acreage sale deferrals for various reasons, completion of MLP NEPA will no longer be one of them. The time frames will be shorter.

5. **Interim Methods.** There are no interim compliance requirements, waivers or variances needed or that would apply. However, the BLM's review of MLP efforts will result in the cancellation of at least those in the very preliminary stage.

Policy, Oil and Gas; IM 2013-177, "National Environmental Policy Act (NEPA) Compliance for Oil and Gas Lease Reinstatement Petitions"

1. **Description.** Policy IM 2013-177 is under review as directed by Executive Order 13783. This IM directs all BLM oil and gas leasing Field Offices to: 1) ensure RMP conformance; 2) evaluate the adequacy of existing NEPA analysis and documentation; and 3) complete any necessary new or supplemental NEPA analysis and documentation before approving a Class I or Class II oil and gas lease reinstatement petition. This IM has resulted in additional analysis and review time that often involves another surface management agency and, in some instances, has led to adding new lease stipulations prior to lease reinstatement.
2. **Opportunities to Address Burden or Other Issues of Concern.** Lease reinstatements were previously considered a ministerial matter, entailing a commensurate level of review and process to complete. However, IM 2013-177 changed that in significant ways, resulting in additional NEPA review and significantly greater timeframes for completing the reinstatement. Rescinding or modifying this policy will greatly reduce decision-making timeframes on lease reinstatement requests. The BLM expects to complete review of this policy in the first quarter of FY 2018.
3. **Anticipated Benefits.** The BLM expects that changes to this policy will refocus the emphasis back to existing NEPA analysis and information, which will significantly shorten the time it takes to consider and process a lease reinstatement request. The policy changes will provide greater certainty and reduced expense for energy development companies and result in production occurring sooner.
4. **Measuring Success.** The BLM will measure the reduction in burden in terms of the average time it takes to consider a complete lease reinstatement request.
5. **Interim Methods.** Similar to MLPs, in the interim, the BLM must identify and evaluate the status of each current lease reinstatement request in order to determine whether and how to expedite review and processing. There are no other interim measures, waivers or variances that are relevant to the process.

Regulation, Oil and Gas; Onshore Orders Nos. 3, 4 and 5

1. **Description.** The burdens placed on industry through these three new regulations are being reviewed as directed under E.O. 13783. These three rulemakings, which were promulgated and issued concurrently, updated and replaced BLM's Onshore Orders for site security, oil measurement, and gas measurement regulations, respectively, that had been in place since 1989. They are codified in the Code of Federal Regulations at 43 CFR parts 3173, 3174, and 3175. External and internal oversight reviews prompted these rulemakings and found that many of the BLM's production

measurement and accountability policies were outdated and inconsistently applied. The new rules also address some of the Government Accountability Office concerns for high risk with regard to the Department's production accountability. These three regulations impose new cost burdens on operators as a result of oil and gas facility infrastructure changes. The cost estimates for each individual rule are as follows: Order 3, Site Security: \$31.2 million in one-time costs, plus an \$11.7 million increase in annual operating costs. Order 4, Oil Measurement: \$3.3 million in one-time costs, plus a \$4.6 million increase in annual operating costs. Order 5, Gas Measurement: \$23.3 million one-time cost, plus \$12.1 million increase in annual operating costs. The new regulations also provide a process for approving new technology that meets defined performance goals. Some provisions of the rule may have added regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation.

2. **Opportunities to Address Burden or Other Issues of Concern.** The BLM is currently assessing the rules to determine if additional revisions are needed beyond the already-implemented phase-in period for certain provisions, the ability for industry to introduce new technologies through a defined process, rather than through an exception request, and the built-in waivers or variances. The BLM expects to complete its assessment of possible changes to alleviate burdens that may have added to constraints on energy production, economic growth and job creation by the end of the fourth quarter of FY 2017.
3. **Anticipated Benefits.** These regulations are a significant step in addressing the "high risk" categorization of the BLM's oil and gas program, and will provide a stable and certain oil and gas measurement framework for many years into the future. Industry benefits from a new defined process through which they may introduce new technologies for acceptance, rather than requesting an exception to government-specified solutions. This will facilitate more efficient adoption of new oil and gas field technologies as they develop. The revisions to Onshore Order 5, Gas Measurement, provide greater flexibility for industry in the technology used to perform gas royalty measurements, encouraging industry innovation and cost savings. The three rules generally provide greater consistency and certainty to industry, economic benefits to the producers of oil and gas, and a phased approach to allow industry to spread the cost of compliance over multiple years. This phased-in approach provides industry the opportunity to plan the changes in concert with oil and gas development plans and budget cycles.
4. **Measuring Success.** The BLM will measure success over the phase-in period in terms of the production measurements, royalties paid, a reduction in under-reporting of production, and greater site security for production facilities.
5. **Interim Methods.** The BLM's establishment of a phase-in period for the new site security and production measurement regulations is an interim measure. The new regulations have built in any necessary waivers or variances.



Policy, Oil and Gas: IM 2016-140, “Implementation of Greater Sage-grouse Resource Management Plan Revisions or Amendments – Oil & Gas Leasing and Development Sequential Prioritization”

1. **Description.** Policy IM 2016-140 is being reviewed for the purpose of enhancing consistency and certainty for oil and gas development in areas of sage-grouse habitat as directed by Executive Order 13783. This IM provides guidance on prioritizing implementation decisions for BLM oil and gas leasing and development, to be consistent with Approved Resource Management Plan Amendments for the Rocky Mountain and Great Basin Greater Sage-grouse Regions and nine Approved Resource Management Plans in the Rocky Mountain Greater Sage-grouse Region (collectively referred to as the Greater Sage-grouse Plans). The IM applies to activities in the areas covered by both the Rocky Mountain and Great Basin Regions Records of Decision, issued by the BLM in September 2015, and also contains reporting requirements for communication between BLM State Offices and the WO. The IM may have added administrative burdens since it requires additional analysis and staff time to screen parcels and weigh potential impacts to the Greater Sage-grouse before the parcels are offered for leasing. It also requires additional analysis and staff time to process drilling permit approvals near Greater Sage-grouse areas.
2. **Opportunities to Address Burden or Other Issues of Concern.** The BLM’s effort to avoid listing of the sage-grouse as an endangered species has affected many programs and a large area geographically. With new technologies and capabilities, such as long-reach horizontal boreholes in the oil and gas industry, the impacts need not be as significant as once perceived. Likewise, the administrative burden is better understood and is likely less than once thought. Efforts are underway to better understand these conditions and define ways in which energy production and sage-grouse protection may continue to co-exist. Greater consistency and predictability will provide greater stability for industry. The BLM is currently assessing the policy to determine what revisions are needed and expects to complete this review in the fourth quarter of FY2017.
3. **Anticipated Benefits.** When the BLM completes this effort, industry will have greater certainty in leasing, exploration and production activities due to availability of acreage for oil and gas development and a defined process and timeframe for consideration of Greater Sage-grouse impacts.
4. **Measuring Success.** The BLM will measure success by assessing changes industry’s interest in nominating acreage for competitive sale and developing existing leases in areas affected by the Greater Sage-grouse amendments to RMPs. As industry increases its understanding and gains confidence in the consistency and predictability of BLM actions relative to Greater Sage-grouse, then acreage nominations, permit requests, and development should stabilize and be tied to market forces rather than tied to BLM Greater Sage-grouse decisions.
5. **Interim Methods.** The BLM has been processing acreage nominations in Greater Sage-grouse areas and making them available for competitive sale. In addition, existing leases are being developed. This is evidence, in the interim, that both the

BLM and industry are figuring out how to adapt energy development in light of Greater Sage-grouse protections.

#### Land Use Planning and NEPA Act Policies and Procedures:

1. **Description.** The BLM's land use planning regulations and policies are outlined in 43 CFR subpart 1610, Resource Management Planning; BLM Manual Section 1601; and BLM Handbook 1601-1. The BLM's policies for complying with NEPA are outlined in BLM Handbook 1790-1. Taken together, these regulations, manuals, and handbooks establish the policies and procedures the BLM follows when conducting land use planning and complying with NEPA, including with respect to energy and mineral development.
2. **Opportunities to Address Burden or Other Issues of Concern.** Pursuant to the Secretarial Memorandum of March 27, 2017, entitled "Improving the Bureau of Land Management's Planning and National Environmental Policy Act Processes," the BLM is identifying potential actions it could take to streamline its planning and NEPA review procedures. As part of this identification process, the BLM is working with state and local elected officials and groups, including the Western Governors' Association and the National Association of Counties, to engage and gather input. The BLM also has invited tribes and the public to provide input on how the agency can make its planning and NEPA review procedures timelier, less costly, and more responsive to local needs. Pursuant to the Secretarial Memorandum, in September 2017, the BLM will submit a report to the Secretary outlining recommended actions.
3. **Anticipated Benefits.** The BLM anticipates completion of its report in September 2017. Once implemented, the actions recommended in the report should reduce the time and/or cost of complying with the BLM's statutory direction to conduct land use planning under section 202 of FLPMA and comply with NEPA when evaluating proposed actions. These recommendations also should lead to more-standardized analyses in BLM's NEPA reviews at the land use plan and project level.
4. **Measuring Success.** The reduction in burden will be measured and evaluated in terms of processing times and/or costs of authorizing energy development.
5. **Interim Methods.** Some of the actions outlined in BLM's report to the Secretary will be actions that the BLM will be able to implement in the near future, such as improvements to business processes, or updates to internal manuals or handbooks. Other actions, such as new Categorical Exclusions, would require changes in statute or regulation, may depend on other agencies to act, or may require front-end investments in data or information technology.

#### Greater Sage-Grouse Conservation Policies and Plans:

1. **Description.** In September 2015, the BLM incorporated Greater Sage-grouse (GRSG) conservation measures into its land use plans within the range of the GRSG. In September 2016, the BLM issued a number of IMs to help guide the implementation of the GRSG plans. These GRSG plans and policies will affect

where, when, and how energy and minerals are developed within the range of the GRSG.

2. **Opportunities to Address Burden or Other Issues of Concern.** Pursuant to Secretary's Order 3353, "Greater Sage-Grouse Conservation and Cooperation with Western States," a Department of the Interior Sage-Grouse Review Team (Review Team) is working with the State-Federal Sage-Grouse Task Force to identify opportunities for greater collaboration, to better align Federal and State plans for the GRSG, support local economies and jobs, and consider new and innovative ways to conserve GRSG in the long-term. Pursuant to the Secretary's Order, in August 2017, the Review Team will submit a report to the Secretary summarizing their review and providing recommendations regarding next steps.
3. **Anticipated Benefits.** The BLM anticipates that the Review Team's report will identify a number of potential actions to enhance the coordination and integration of state and Federal GRSG conservation efforts. The BLM also anticipates that the report will identify actions that could be taken to facilitate energy and mineral development within the range of the GRSG.
4. **Measuring Success.** Success will be measured and evaluated in terms of improved working relationships among local, state, tribal and Federal units of government and in terms of improved partner and stakeholder understanding of effective GRSG conservation measures and of the science underlying them.
5. **Interim Methods.** The BLM anticipates that some of the actions outlined in the Review Team's report to the Secretary could be implemented in the near future through changes in policy (through issuance of IMs, for example), technical assistance, or training. Other actions may require amending the land use plans. Depending on the scope and significance, such amendments could take upwards of 2-4 years to complete.

## Memorandum

**To:** Acting Deputy Secretary

**Through:** Katharine S. MacGregor  
Acting Assistant Secretary, Land and Minerals Management

**From:** Walter Cruickshank  
Acting Director, BOEM

**Subject:** BOEM E.O. 13783 Energy Report

### I. Executive Summary

BOEM continues the efforts begun earlier this calendar year to reduce regulation and control regulatory costs pursuant to E.O. 13771. Further, in accordance with E.O. 13795 and S.O. 3350, BOEM has been reviewing all aspects of its programs to identify regulations and guidance documents that potentially burden the development or use of domestically produced energy resources beyond the degree necessary to protect the public interest or otherwise comply with the law.

The ten specific items identified below and in the attached spreadsheet encompass regulations, guidance documents, and information collections. These include:

- Three items identified for specific action in the America First Offshore Energy Strategy, as delineated in E.O. 13795 and S.O. 3350. These items fit into Category H, “Other Actions that Potentially Burden Development or Use of Energy.”
  - Notice to Lessees No. 2016-N01: This NTL, for which implementation has been suspended, would make substantial changes to BOEM’s requirements for companies to provide financial assurance to meet decommissioning obligations. BOEM has been undertaking a thorough review of the NTL, including gathering stakeholder input, and plans to present options to Departmental leadership this summer.
  - Air Quality Proposed Rule: BOEM has been re-examining the provisions of this proposed rule, which would provide the first substantive updates to the regulation since 1980. Pursuant to the Secretary’s Order, BOEM has drafted a report with recommendations on how to proceed, including promulgating final rules for certain necessary provisions, and issuing a new proposed rule that would withdraw certain provisions and seek additional input on others.
  - Arctic Rule: On July 15, 2016, BOEM and the Bureau of Safety and Environmental Enforcement promulgated a final rule, *Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf*. BOEM proposes to rescind its new provision in that rule, which required companies to submit an Integrated Operations Plan in advance of any Exploration Plan.
- Three items related to the offshore renewable energy program (two rules and one guidance document), which fit into Category H, “Other Actions that Potentially Burden Development or Use of Energy.” These actions would reduce the burden in preparing

site assessment plans and construction and operations plans by eliminating unnecessary requirements and providing greater flexibility to the developers in designing their projects.

- Four energy-related information collections, two of which are related to the Arctic Rule, and two of which collect information that is no longer needed.

## **II. Recommendations for Alleviating or Eliminating Burdensome Actions**

### **A. Climate Change Actions**

BOEM did not identify any existing requirements for consideration of climate change impacts.

### **B. Mitigation Actions**

BOEM may require certain mitigation measures, which are typically attached to new lease agreements as stipulations or as conditions of approval of plans or geological and geophysical permits. BOEM did not identify any mitigation measures, the burden of which could be reduced or eliminated.

### **C. Coal-Related**

Not Applicable

### **D. Indian Energy Actions**

Not applicable.

### **E. Energy-related Information Collections under the Paperwork Reduction Act**

BOEM has approximately 14 OMB information collection control numbers associated with its regulations and guidance that must be renewed every three years on a rotational basis. The renewal process involves an analysis of whether each information collection continues to be necessary and, if so, whether it requires modification. Through this process, BOEM continuously reviews our forms and the information we collect, reducing the information collection burdens wherever appropriate. Four information collection burdens that might be reduced or eliminated are discussed below in this section. There may be further burden reductions associated with potential revisions to the rules and guidance documents discussed below under category H, once final determinations have been made with respect to those actions.

## **Social Indicators in Coastal Alaska: Arctic Communities, OMB Control No. 1010-0188**

### **1. Description:**

The purpose of the survey was to assess the vulnerabilities of six North Slope Native coastal communities in northern Alaska to the potential effects of offshore oil and gas

development on the social well-being and living conditions of its residents. Respondents are members of the Alaskan coastal communities in the North Slope Borough.

**2. Opportunities to Address Burden or Other Issues of Concern:**

BOEM plans to discontinue this OMB control number as this information collection is no longer necessary.

**3. Anticipated Benefits:**

Discontinuing this information collection will reduce 834 annual burden hours, the dollar value of which BOEM estimates to be \$35,000.

**4. Measuring Success:**

Submit the request to discontinue the information collection to OMB.

**5. Interim Methods:**

Not applicable.

**30 CFR Part 550, Subpart B, Plans and Information, OMB Control No. 1010-1051**

**1. Description:**

Sections 11 and 25 of the OCS Lands Act require the holders of OCS oil and gas, or sulfur leases to submit an exploration plan (EP) or a development and production plan (DPP) to the Secretary for approval prior to commencing these activities.

**2. Opportunities to Address Burden or Other Issues of Concern:**

BOEM will increase this control number's annual information collection burden hours by 3,930, which will increase the annualized cost by \$330,000. This increase is due to adding the new information collection requirements in RIN 1082-AA00 (Arctic Rule) by consolidating information collection burdens currently covered by OMB Control No. 1010-0189 into this OMB Control Number (see next item below).

**3. Anticipated Benefits:**

If the Arctic Rule is rescinded, then there will be no incremental cost. If the Arctic Rule is rescinded in part, then the incremental cost will need to be adjusted downward (see discussion below on BOEM's proposal to rescind the requirements for an Integrated Operations Plan (IOP)).

**4. Measuring Success:**

Undetermined.

**5. Interim Methods:**

There are no interim measures available.

### **30 CFR Part 550, Subpart B, Arctic OCS Activities, OMB Control No. 1010-0189**

**1. Description:**

This information collection addresses the provisions in a final rulemaking dealing with plans associated with activity on the Arctic OCS.

**2. Opportunities to Address Burden or Other Issues of Concern:**

BOEM plans to discontinue this control number, and consolidate the annual burden hours/costs into control number 1010-0151.

**3. Anticipated Benefits:**

Undetermined. See discussion under Control No. 1010-0151 above.

**4. Measuring Success:**

Submit the request to discontinue the information collection to OMB.

**5. Interim Methods:**

Not applicable.

### **Environmental Impact Assessment (EIA), OMB Control No. 1010-0151**

**1. Description:**

Sections 11 and 25 of the OCS Lands Act require the operators of OCS oil and gas, or sulfur leases to submit an exploration plan (EP) or a development and production plan (DPP) to the Secretary for approval prior to commencing these activities. Under 30 CFR 550.227 and 30 CFR 550.261, the operator is required to prepare an environmental impact assessment (EIA) prior to submittal of an EP or a DPP.

**2. Opportunities to Address Burden or Other Issues of Concern:**

BOEM views sections 550.227 and 30 550.261 as non-essential and proposes to rescind them. An industry-prepared EIA is not necessary and somewhat redundant because BOEM is required to complete an independent environmental analysis under the National Environmental Policy Act (NEPA) prior to approving an EP or a DPP.

**3. Anticipated Benefits:**

BOEM conservatively estimates that rescinding sections 550.227 and 550.261 would save the operator 9,780 hours and \$59,870 to develop the EIA for an EP and 18,760 hours and \$113,578 for a DPP.

**4. Measuring Success:**

The EIA is purely informational requiring no action by the agency; therefore, there is nothing for the agency to directly measure in terms of reducing operator burden; however, a strong indication of likely success should be evident in public comments received from industry groups during the proposed rulemaking stage. Industry may provide feedback on how rescinding these requirements would expedite exploration and development.



**5. Interim Methods:**

Removing the collection of this information from OMB Control No. 1010-0151 would eliminate BOEM's authority to collect the information.

**F. Grant Programs**

Not applicable.

**G. Restrictions in Acquisition Policy and Regulations**

Not applicable.

**H. Other Actions that Potentially Burden Development or Use of Energy**

**NTL No. 2016-N01, Requiring Additional Security, BOEM Guidance Document, 30 CFR 556**

**1. Description:**

BOEM's regulations (30 CFR 556.901(d)) allow the Regional Director to require additional financial security when necessary to ensure compliance with lease obligations. The Regional Director bases any such decision on an evaluation of a company's ability to carry out its financial obligations, as demonstrated by five criteria listed in the regulation (financial capacity, projected financial strength, business stability, reliability, and record of compliance). BOEM and its predecessor agencies have relied on NTLs to define these criteria and the procedures used to implement these regulations to ensure a consistent and transparent approach. This NTL, for which implementation has been suspended, would make substantial changes to BOEM's requirements for companies to provide financial assurance to meet decommissioning obligations.

**2. Opportunities to Address Burden or Other Issues of Concern:**

Consistent with S.O 3350, BOEM is reviewing options for revising or rescinding the NTL. BOEM expects to present options to senior management in August.

**3. Anticipated Benefits:**

Undetermined.

**4. Measuring Success:**

Undetermined.

**5. Interim Methods:**

No interim measures are available.

## **Air Quality Rule, RIN 1010-AD82**

### **1. Description**

BOEM's air quality jurisdiction under 43 U.S.C. 1334(a)(8) requires BOEM to promulgate regulations "for compliance with the national ambient air quality standards pursuant to the [CAA] . . . to the extent that activities under OCSLA significantly affect the air quality of any State." In 1980, the USGS, a BOEM predecessor agency, promulgated air quality regulations for activities authorized on the entire OCS, which currently serve as BOEM's air quality regulations. The geographic extent of DOI's jurisdiction for ensuring compliance with the National Ambient Air Quality Standards (NAAQS) pursuant to the Clean Air Act (CAA) has changed twice over the past 37 years and is now limited to OCS areas adjacent to Texas, Louisiana, Mississippi, Alabama, and the areas adjacent to the North Slope Borough of the State of Alaska. BOEM's air quality regulations require some updates. To address this need, BOEM published the "Offshore Air Quality Control, Reporting, and Compliance Proposed Rule" on April 5, 2016 (81 FR 19717), which contained the needed updates as well several changes in policy.

### **2. Opportunities to Address Burden or Other Issues of Concern:**

Consistent with S.O. 3350, BOEM has prepared a report explaining the effects of not issuing a new rule addressing offshore air quality, and providing options for revising or withdrawing the proposed rule. Specifically, BOEM is proposing to promulgate final rules for certain necessary provisions, re-propose certain provisions, and eliminate other provisions of the proposed rule.

### **3. Anticipated Benefits:**

Undetermined.

### **4. Measuring Success:**

Undetermined.

### **5. Interim Methods:**

No interim measures are available.

## **Arctic Rule, RIN 1082-AA00, BSEE and BOEM Joint Rule**

### **1. Description:**

The Arctic rule was published on July 16, 2016, and revised existing regulations and added new prescriptive and performance-based requirements for exploratory drilling conducted from mobile drilling units and related operations on the Outer Continental Shelf (OCS) within the Beaufort Sea and Chukchi Sea Planning Areas (Arctic OCS). The Arctic region is characterized by extreme environmental conditions, geographic remoteness, and a relative lack of fixed infrastructure and existing operations. The Arctic rule is intended to ensure safe, effective, and responsible exploration of Arctic

OCS oil and gas resources, while protecting the marine, coastal, and human environments, and Alaska Natives' traditions and access to subsistence resources.

**2. Opportunities to Address Burden or Other Issues of Concern:**

As described in the joint BSEE/BOEM memo dated May 22, 2017, to the Acting Deputy Secretary, BOEM is proposing to revise the Arctic rule. Most notably, the Arctic rule includes a new section, 30 CFR 550.204, dealing with Integrated Operations Plans (IOP) and an expanded section, 30 CR550.220, covering requirements for emergency plans. BOEM is proposing to rescind section 550.204 but retain the expanded section 550.220. Under section 550.204, the operator is required to submit an Integrated Operations Plan (IOP) to BOEM at least 90 days in advance of an Exploration Plan (EP). BOEM views the new section 550.204 as non-essential. Its purpose is merely informational--no operational requirements are established by the IOP.

BSEE has also identified a number of opportunities to reduce burdens on operators. Its proposals were included in the joint BSEE/BOEM memo referenced above. A joint rulemaking would likely be undertaken again.

**3. Anticipated Benefits:**

Rescinding the IOP requirement would save the operator time and expense in preparing a separate document in advance of an EP. BOEM estimates the IOP places an annual burden of 2,880 hours on the operator, and costs the operator \$281,721 to prepare. BOEM would save an estimated \$60,562 and an estimated 720 hours of staff review time per IOP review.

**4. Measuring Success:**

The IOP is purely informational requiring no action by the agency; therefore, there is nothing for the agency to directly measure in terms of reducing operator burden; however, a strong indication of likely success should be evident in public comments received from industry groups during the proposed rulemaking stage.

**5. Interim Methods:**

No interim measures are available. However, because there are no proposed near-term exploratory drilling projects on the Arctic OCS that fall within the scope of section 550.204 (i.e., MODU drilling), this provision is not expected to impose any burden before the rulemaking process would be initiated.

## **Site Assessment Plan (SAP), 30 CFR 585, Subpart F, Plans and Information Requirements**

### **1. Description:**

BOEM's current renewable energy regulations require lessees to submit a Site Assessment Plan (SAP) prior to deploying a meteorological buoy to collect wind resource and site assessment data.

### **2. Opportunities to Address Burden or Other Issues of Concern:**

BOEM's SAP requirements can be more burdensome than is necessary. Accordingly, BOEM is proposing to revise its guidelines, revise the SAP regulations, and develop internal guidelines for SAP review to ease the uncertainty regarding plan processing.

### **3. Anticipated Benefits:**

BOEM's current calculations for submitting a SAP indicates an annual information collection burden of 240 hours. Upon implementation of the reforms discussed in this section, the burden for meteorological buoy proposals could be expected to be reduced by 50 hours to 190 burden hours per SAP.

### **4. Measuring Success:**

BOEM will depend upon feedback from offshore wind lessees to determine the success of this measure, which will be determined by the reduction in the number of hours it takes a lessee to prepare a SAP for a meteorological buoy proposal.

### **5. Interim Methods:**

BOEM may be able to grant departures to reduce these burdens until the regulatory revisions are finalized.

## **Use of a Project Design Envelope in a Construction and Operations Plan (COP) – Guidance Document**

### **1. Description:**

BOEM is working to provide flexibility for developers to defer final design decisions for offshore wind projects until later in the process to take advantage of rapid technological advances that could outpace the permitting process, particularly where offshore wind leases are developed in phases.

### **2. Opportunities to Address Burden or Other Issues of Concern:**

BOEM is proposing the use of a "project design envelope" approach, which will also allow BOEM to reduce or eliminate the need for subsequent environmental and technical reviews by BOEM as project design parameters are finalized. In addition, this approach allows for the

integration of National Environmental Policy Act (NEPA) reviews earlier in the planning process.

### **3. Anticipated Benefits:**

These proposed changes could reduce or eliminate the 50 burden hours associated with revising the Construction and Operations Plan (COP) (30 CFR 585.634), or the 10 burden hours associated with notifying BOEM of activities that may not be within the scope of the approved COP (30 CFR 585.634(a)). Moreover, it could eliminate these burden hours multiple times for the same project if multiple revisions were necessary.

### **4. Measuring Success:**

Success will be measured by feedback from industry on the usefulness of BOEM's design envelope approach.

### **5. Interim Methods:**

No interim measures are necessary. BOEM can revise this guidance without notice and comment.

## **Reduced Geotechnical Sampling Requirements for a Construction and Operations Plan (COP), 30 CFR 585.626**

### **1. Description:**

BOEM's regulations at 30 CFR 585.626(a)(4) currently require an offshore wind lessee to include a full and complete geotechnical survey in its Construction and Operations Plan (COP), which must include "the results of adequate in situ testing, boring, and sampling at each foundation location to examine all important sediment and rock strata to determine its strength classification, deformation properties, and dynamic characteristics." Geotechnical survey work of this nature may be the single most expensive of all of BOEM's COP requirements (the cost of the surveys for a modest-sized wind project could run into the tens of millions of dollars). Moreover, although necessary before final design and construction may begin, a full and complete geotechnical survey is not required for BOEM to make an informed decision about whether or not to approve the plan, as a preliminary geotechnical survey of limited scope would most likely be sufficient. Geotechnical surveys for large construction projects are typically more efficient when performed in phases in tandem with the overall project design.

### **2. Opportunities to Address Burden or Other Issues of Concern:**

Significant project savings can be obtained by allowing the geotechnical surveys to be performed in separate phases, with the final full survey to be submitted with the Facility Design Report and the Fabrication and Installation Report. Also, allowing the COP to be

submitted with a preliminary level geotechnical survey can save significant time since the surveys are limited by seasonal weather conditions.

**3. Anticipated Benefits:**

Reducing the geotechnical survey requirements for the SAP and moving the burden to later during the design process could result in millions of dollars of cost savings for the lessee because it would potentially not have to repeat the surveys for both phases of project planning.

**4. Measuring Success:**

Once implemented, benefits can be tracked by companies choosing to postpone some geotechnical surveys until after the COP is submitted. Each COP submitted without the currently required geotechnical surveys reflects a business decision by the lessee that deferral of such surveys was preferable.

**5. Interim Methods:**

No interim measures are available.

Attachment: BOEM Spreadsheet

## **Memorandum**

**To:** Deputy Secretary

**Through:** Katharine S. MacGregor  
Acting Assistant Secretary, Land and Minerals Management

**From:** Scott Angelle  
Director, BSEE

**Subject:** BSEE E.O. 13783 Energy Report

### **Executive Summary**

BSEE continues the efforts begun earlier this calendar year to review and seek stakeholder input on opportunities to reduce burden on the regulated community while maintaining necessary safety and environmental protections. Specifically, the Bureau is focusing its review on two final rules, published in 2016, regarding safety and environmental protection for oil and gas exploration, development and production activities on the Outer Continental Shelf (OCS). The first is the Well Control and Blowout Preventer (BOP) Rule; the second is the Arctic Exploratory Drilling Rule (the Arctic Rule), which was issued jointly by BSEE and BOEM. Both rules (as described below) revised older regulations and added some new requirements that potentially burden development of domestic offshore oil and gas production. BSEE continues to identify specific issues in both final rules that, if revised or eliminated through a future rulemaking process could alleviate those burdens without reducing the safety or environmental protections benefits of the rules. BSEE is beginning the process of drafting timelines and developing stakeholder engagement strategies for potential revision to both sets of regulations. These rules fit into the category of “Other Actions that Potentially Burden Development or Use of Energy.”

In the April memorandum of this year, BSEE also identified policies that should be re-examined. Those are:

- Review decommissioning infrastructure removal requirements and timelines for infrastructure;
- Clarify Civil Penalties Guidance; and
- Review current policies associated with taking enforcement actions against contractors.

BSEE will continue to examine these documents for revision. We have described them in brief in this memo. None of these reviews require a rulemaking or notice and comment process.

To date, BSEE has accomplished one regulatory change that is expected to provide operators with needed flexibility as they explore newer discoveries in the Gulf of Mexico. This rule change was promulgated on June 9, 2017, and is summarized below: This is reflected in the attached spreadsheet.



BSEE is also reviewing Subpart H, the Production Safety Systems Rule, based on Department guidance received between April and May of this year. If areas for revision are identified, the Bureau would tier it behind the Well Control Rule (WCR) and the Arctic Rule in terms of potential burden reduction. More details on this action are provided in BSEE's April 19, 2017 memorandum.

## **I. A. Climate Change Actions**

BSEE identified no existing requirements, nor was it in the process of developing such processes, for consideration of climate change impacts in response to now rescinded orders.

## **B. Mitigation Measures**

Mitigation measures, if any, are attached at the lease agreement stage by BOEM. BSEE's role is limited to monitoring adherence to these lease stipulations.

## **C. Coal-Related**

Not Applicable

## **D. Indian Energy Actions**

Not applicable.

## **II. E. Energy-related Information Collections under the Paperwork Reduction Act**

BSEE has approximately 25 information collections associated with our regulations and guidance that must be renewed every three years on a rolling basis. The renewal process involves an analysis of whether each information collection continues to be necessary and if whether it requires modification. Through this process, BSEE continuously reviews our forms and the information we collect and reduces the collection burden wherever appropriate. Additionally, there may be further burden reduction associated with potential revisions to the Well Control and Arctic rules once final determinations have been made with respect to specific action on those regulations.

## **H. Other Actions that Potentially Burden Development or Use of Energy**

### **Well Control and BOP Rule (WCR)**

#### **1. Description:**

The WCR was issued on April 29, 2016 and consolidated existing equipment and operational requirements for well control, including drilling, completion, workover and decommissioning operations. The rule also incorporated or updated references to numerous industry standards and established new requirements reflecting advances in

areas such as well design and control, casing and cementing, real-time monitoring (RTM), and subsea containment of leaks and discharges. In addition, the final rule adopted several reforms recommended by several bodies that investigated the *Deepwater Horizon* incident.

## **2. Opportunities to Address Burden or Other Issues of Concern:**

As described in a BSEE/BOEM memo dated May 22, 2017, to the Acting Deputy Secretary, BSEE is considering several specific revisions to our regulations. Among those considerations is a rulemaking to revise the following aspects of the new well control regulations:

- Extending the 2018 compliance date for the ability to shear tubing that has exterior control lines and wire.
- Revising the requirements for sufficient accumulator capacity and remotely-operated vehicle (ROV) capability to both open and close rams on subsea BOPs (i.e., to only require capability to close the rams).
- Revising the requirement to shut in platforms when a lift boat approaches within 500 feet.
- Extending the 14-day interval between pressure testing of BOP systems to 21 days in some situations.
- Clarifying that the requirement for weekly testing of two BOP control stations means testing one station (not both stations) per week.
- Simplifying testing pressures for verification of ram closure.
- Revising or deleting the requirement to submit test results to BSEE District Managers within 72 hours.

## **3. Anticipated Benefits:**

Among the anticipated benefits is a potential savings to the regulated industry of \$4 billion dollars over the course of 10 years. These changes are expected to reduce cost while maintaining important safety and environmental protections.

## **4. Measuring Success:**

The revised economic analysis to accompany any regulatory changes will identify the expected benefits.

## **5. Interim Methods:**

BSEE plans to begin the process of reviewing potential regulatory changes to this rule in July 2017. The interim step before issuing a proposed rule to revise existing regulations is to seek input on potential areas of reform from the stakeholders. BSEE is in the process of determining the most effective way to engage stakeholders to provide meaningful and constructive input on regulatory reform efforts related to well control. As a result of

stakeholder outreach, the above list of potential reforms may be adjusted or added to. In July BSEE also plans to request a new RIN number for a new rule proposal.

## **Arctic Rule**

### **1. Description:**

The Arctic Rule was published on July 16, 2016 and revised existing regulations and added new prescriptive and performance-based requirements for exploratory drilling conducted from mobile drilling units and related operations on the Outer Continental Shelf (OCS) within the Beaufort Sea and Chukchi Sea Planning Areas (Arctic OCS). The Arctic region is characterized by extreme environmental conditions, geographic remoteness, and a relative lack of fixed infrastructure and existing operations. The final rule is intended to ensure safe, effective, and responsible exploration of Arctic OCS oil and gas resources, while protecting the marine, coastal, and human environments, and Alaska Natives' traditions and access to subsistence resources.

### **2. Opportunities to Address Burden or Other Issues of Concern:**

As described in a BSEE memo dated May 22, 2017, to the Acting Deputy Secretary, BSEE is initially considering several specific revisions to our regulations. Among those considerations is a rulemaking to revise the following aspects of the BSEE requirements in the new Arctic regulations:

- Eliminate BSEE's discretionary authority to require capture of water-based muds and cuttings.
- Eliminate the requirement for a cap and flow system and containment dome that are capable of being located at the well site within seven days of loss of well control.
- Eliminate the reference to the expected return of sea ice from the requirement to be able to drill a relief well within 45 days of loss of well control.
- Eliminate the reference to equivalent technology from the mudline cellar requirement.

BOEM has also identified an opportunity to reduce burden on operators. Its proposal was included in the joint BSEE/BOEM memo of May 22, 2017. A joint rulemaking would likely be undertaken again.

### **3. Anticipated Benefits:**

Among the potential benefits of the items listed above is the possibility of allowing greater flexibility for operators to continue drilling into hydrocarbon zones later into the Arctic drilling season. Current leasing strategies in the Arctic constrain future exploratory activities to which this rule would apply.

### **4. Measuring Success:**

Reduction in burdens associated with exploration of the Nation's Arctic oil and gas reserves while providing appropriate safety and environmental protection tailored to this unique environment.

## **5. Interim Methods:**

Prior to proposing a rulemaking to make the changes above, BSEE and BOEM plan to undertake stakeholder engagement activities. As a result of the stakeholder engagement, the list of potential areas for proposed reform may change or grow. This process will enhance our ability to engage the public and stakeholders, as well as ensure our ability to engage in a robust consultation with tribes and Alaska Native Claims Settlement Act corporations. Stakeholder engagement will have the added benefit of allowing BSEE and BOEM to consider tolling of the primary lease term tailored to the limited drilling windows in the Arctic.

### **Decommissioning Infrastructure Removal Requirements**

BSEE will re-examine the NTL 2010-G05, "Decommissioning Guidance for Wells and Platforms," to determine whether additional flexibility should be provided to better account for facility and well numbers and size, as well as timing consideration that can arise in the case of financial distress or bankruptcy of companies. Any changes to the NTL will not have an impact on companies' underlying decommissioning obligations, but could provide more flexibility to allow for cash-flow management and ultimately increase assurance that decommissioning obligations can be fulfilled without government expense.

### **Lease Continuation Through Operations**

This action was completed on June 9, 2017 when final rule 1014-AA35, "Oil and Gas and Sulphur Operations in the Outer Continental Shelf-Lease Continuation Through Operations," was published in the Federal Register. Section 121 of the Consolidated Appropriations Act of 2017 mandated that BSEE revise the requirements of 30 CFR 250.180 relating to maintaining a lease beyond its primary term through continuous operations. The final rule changed all of the references to the period of time before which a lease expires due to cessation of operations from "180 days" and "180<sup>th</sup> day" to a "year" and from "180-day period" to a "1-year period." The rule has become effective and is allowing operators greater flexibility to plan exploration activities.

### **Contractor Incidents of Noncompliance**

BSEE currently has a policy that calls for issuing notices of noncompliance (INCs) to contractors as well as operators in certain instances. BSEE will examine whether this policy is achieving the desired deterrence value or whether an alternative compliance incentive should be considered and the policy revised. There are currently several ongoing court actions that could result in adjustments to this policy. BSEE will consider all of this information while examining the policy.

## **Civil Penalties**

Since 2013, the BSEE civil penalty program has continued to improve its processes and programs. For example in 2016, each of the Districts in the Gulf of Mexico Region (GOMR) created the position of Civil Penalty Enforcement Specialist to assist with the review of all INCs to determine which INCs are appropriate for civil penalty assessment, and to act as a liaison with the District and Headquarters (HQ) throughout a civil penalty case. This effort has greatly assisted in proving clarity and consistency to the development of civil penalty cases.

Attachment: BSEE Spreadsheet

## **Memorandum**

**To:** Office of the Executive Secretariat

**Through:** Katharine S. MacGregor  
Acting Assistant Secretary, Land and Minerals Management

**From:** Glenda H. Owens  
Acting Director, OSMRE

**Subject:** OSMRE E.O. 13783 Energy Report

### **Executive Summary**

In response to the Executive Order (EO) 13783 and Secretarial Order (SO) 3349 request for information on “other actions impacting energy development,” the Office of Surface Mining Reclamation and Enforcement (OSMRE) has compiled a list of recommended actions. The list is comprised of actions “that potentially burden the development or utilization of domestically produced energy resources” which, for OSMRE is limited to coal. Burden means “to unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the siting, permitting, production, utilization, transmission, or delivery of energy resources” (Presidential Executive Order 13783, Promoting Energy Independence and Economic Growth, March 28, 2017).

In compiling the following list of actions for review, OSMRE considered direct and indirect impacts to the coal industry, as well as impacts to the states with primary responsibility for regulating coal mining activities, pursuant to the Surface Mining Control and Reclamation Act.

#### **I. Recommendations for Alleviating or Eliminating Burdensome Actions**

##### **C. Coal Related**

##### **Disapproval of the Stream Protection Rule**

###### **1. Description:**

The Stream Protection Rule (SPR) was published on December 20, 2016, and became effective on January 19, 2017. In accordance with the Congressional Review Act, Congress passed, and the President signed, a resolution of disapproval of the SPR on February 16, 2017, as Public Law 115-5. As set forth in 5 U.S.C. 801(f), by operation of law, the SPR must be treated as if it had never taken effect. However, because the Congressional Review Act does not direct the Office of the Federal Register (OFR) to remove the voided regulatory text and reissue the previous regulatory text, OSMRE—after consultation with the Office of Management and Budget Office of Information and Regulatory Affairs, the Department of the Interior Office of the Solicitor, OFR, and in conformity with the OFR’s Document Drafting Handbook—will publish a Final Rule revoking the SPR, and replacing it with the regulations that were in place prior to January 19, 2017. This Final Rule will result in the removal of any amendments, deletions or other

modifications associated with the nullified rule, and the reversion to the text of all regulations in effect immediately prior to the effective date of the SPR.

## **2. Opportunities to Address Burden or Other Issues of Concern:**

Generally, the Administrative Procedure Act requires an agency to provide notice of proposed rulemaking and a period of public comment before the promulgation of a final regulation. Section 553(b)(3)(B) of the Administrative Procedure Act, however, provides an exception to this practice “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” We have determined that because of the clear Congressional intent outlined in section 801(f) of the Congressional Review Act to immediately implement the joint disapproval, the application of section 553(b)(3)(B) is appropriate and no notice or comment period shall occur. A Final Rule will be published.

## **3. Anticipated Benefits:**

OSMRE estimates elimination of this rule will save industry approximately \$82 million, and will reduce the amount of time states and OSMRE are expending in the processing of permit applications and monitoring performance during the life of the operation.

## **4. Measuring Success:**

Publication of the Final Rule replacing the stream protection rule on or about September 30, 2017.

## **Ten-Day Notices and Independent Inspections – Directives INE-24, INE-35, & REG-8**

### **1. Description:**

Under revisions to OSMRE Directive REG-8, which establishes policies, procedures and responsibilities for conducting oversight of state and tribal regulatory programs, OSMRE conducts 10% of all routine oversight inspections with 24 hours’ notice to the state regulatory authority. If the state inspector is unavailable to accompany the OSMRE inspector, OSMRE will conduct the inspection alone. These and other oversight inspections sometimes result in the issuance of Ten-Day Notices (TDNs) to the state regulatory authority under Inspection and Enforcement (INE)-35. In addition, INE-24, issued on May 26, 1987, requires OSMRE to issue a TDN to state regulatory authorities upon receipt of a citizen’s complaint.

Between 2011 and 2016, 882 TDNs were issued to state regulatory programs. On an annual basis, 39 to 74% of those resulted from citizen’s complaints. In addition, an evaluation of data during 2013 found that the number of TDNs issued when the state inspector does not participate was determined to be 6.4% of the total oversight inspections, versus 1.5% when the state inspector accompanied the OSMRE inspector. State regulatory authorities, particularly in the Appalachian Region, have expressed concern that the number of hours required to prepare TDN responses can be significant.



## **2. Opportunities to Address Burden or Other Issues of Concern:**

In an effort to address these concerns, a joint OSMRE and State/Tribal Work Group assessed various topics, including the use of TDNs and independent inspections. In a report issued on July 30, 2014, the Work Group made six specific recommendations for the TDN process and four recommendations regarding the independent inspection process. Interstate Mining Compact Commission (IMCC) member states have requested OSMRE revisit these recommendations, and others, in an effort to implement the recommendations. In addition, OSMRE will revisit and revise, as needed, the specific policy directives governing the use of TDNs and independent inspections in cooperation with the IMCC.

## **3. Anticipated Benefits:**

Reduction in the amount of time states and OSMRE are expending in the processing of TDNs.

## **4. Measuring Success:**

The review will commence this calendar year, following specific timelines and benchmarks to be established jointly with IMCC.

## **OSMRE Memorandum and Directive INE-35 – TDNs and Permit Defects**

### **1. Description:**

On November 15, 2010, the OSMRE Director issued a memorandum directing OSMRE staff to apply the TDN process and Federal enforcement to permitting issues under approved regulatory programs. In support of this memorandum, on January 31, 2011, the Director reissued Directive INE-35, regarding policy and procedures for the issuance of TDNs. This directive requires the issuance of a TDN whenever a permit issued by the state regulatory authority (RA) contains a “permit defect,” which the directive defines as meaning “a type of violation consisting of any procedural or substantive deficiency in a permit-related action taken by the RA (including permit issuance, permit revision, permit renewal, or transfer, assignment, or sale of permit rights).” The directive further states that OSMRE will not review pending permitting decisions and will not issue a TDN for an alleged violation involving a possible permit defect where the RA has not taken the relevant permitting action (e.g., permit issuance, permit revision, permit renewal, or transfer, assignment, or sale of permit rights).

### **2. Opportunities to Address Burden or Other Issues of Concern:**

Since the issuance of this policy and associated directive, concerns have been raised by some states and industry stakeholders regarding the potential impact on mining operations where the RA has issued a permit, revision, or renewal, and the operator has commenced activities based upon RA approval. OSMRE in cooperation with the IMCC will revisit the policy and directive and revise or rescind, as appropriate.

### **3. Anticipated Benefits:**

Provide more certainty to the industry in the State RA permitting process.

#### **4. Measuring Success:**

The review will commence this calendar year, specific timelines and benchmarks will be established jointly with IMCC.

### **Processing State Program Amendments – Directive STP-1**

#### **1. Description:**

Directive STP-1, issued in October 2008, establishes policy and procedures for review and processing of amendments to state regulatory programs. Most changes in state law or regulations that impact an approved SMCRA regulatory program require submission of a formal program amendment to OSMRE for approval. Such changes to primacy programs cannot be implemented until a final amendment is approved by OSMRE. In addition, written concurrence must be received from the Administrator of the Environmental Protection Agency with respect to those aspects of a state/tribal program amendment which relates to air or water quality standards promulgated under the authority of the Clean Air Act or the Clean Water Act prior to OSMRE approval. In accordance with 30 CFR 732.17(h)(13), OSMRE must complete a final action on program amendments within seven months of receipt. Often, due to the complexities of the process and other issues, including influences outside of OSMRE, it is difficult for OSMRE to meet the required processing times.

The result is that state regulatory authorities are occasionally unable to move forward in a timely manner with needed program amendments.

#### **2. Opportunities to Address Burden or Other Issues of Concern:**

Based upon the results of an internal control review (ICR) and work with the state/tribal work group, OSMRE is developing new training guides and opportunities for states and revising Directive STP-1 to improve the state program amendment process. OSMRE will also review the process with the Solicitor's office to evaluate opportunities for process improvement. In addition, the recent approval by OMB of the information collection requirements of 30 CFR Part 732 was conditioned upon OSMRE developing new guidance and supporting documents for states to use when preparing amendments to approved programs.

#### **3. Anticipated Benefits:**

Reductions in processing time for state program amendments.

#### **4. Measuring Success:**

The revision of Directive STP-1 and development of training guides is anticipated to be completed this calendar year. OSMRE will track processing times once the revised directive and training have been implemented, and compare results to previous years. OMB approval of new guidance for Part 732 is required by July 31, 2020.

### **OSMRE Policy Advisory and Proposed Rulemaking: Self-Bonding**

#### **1. Description:**

On August 5, 2016, the Director of OSMRE issued a policy advisory on self-bonding. The advisory was in direct response to three of the largest coal mine operators in the nation filing for Chapter 11 protection under the U.S. Bankruptcy Code between 2015 and 2016. Those companies held approximately \$2.5 billion of unsecured or non-collateralized self-bonds that various states with Federally approved SMCRA regulatory programs previously accepted to guarantee reclamation of land disturbed by coal mining. The advisory stated that “the bankruptcy filings confirm the existence of significant issues about the future financial abilities of coal companies and how they will meet future reclamation obligations.” While recognizing the action of certain state programs to address self-bonding issues, the advisory went on to say that “each regulatory authority should exercise its discretion and not accept new or additional self-bonds for any permit until coal production and consumption market conditions reach equilibrium, events which are not likely to occur until at least 2021.” Since the issuance of this advisory, all three companies of concern have completed their plans for Chapter 11 reorganization, and either have or are expected to replace all self-bonds with other forms of financial guarantees.

In addition to the issuance of the policy advisory on self-bonding, OSMRE accepted a petition for rulemaking submitted March 3, 2016, by WildEarth Guardians. The petition requested that OSMRE revise its self-bonding regulations to ensure that companies with a history of insolvency, and their subsidiary companies, not be allowed to self-bond coal mining operations.

Limiting the use of self-bonds, as indicated in the policy advisory or potentially through a rulemaking, could impact a company’s ability to continue mining. In addition, there will likely be an increased demand and potential negative impact on the availability of third party surety bonding.

The GAO announced on January 17, 2017, that it will conduct an audit of financial assurances for reclaiming coal mines (job code 101326) that will focus on the role of OSMRE in implementing and overseeing the Surface Mining Control and Reclamation Act’s requirements related to financial assurances.

#### **2. Opportunities to Address Burden or Other Issues of Concern:**

In view of the current status of the self-bonding bankruptcies and recent executive orders concerning rulemakings, OSMRE will reconsider the scope of the policy advisory and revise or rescind, as appropriate. In addition, OSMRE will revisit the need for and scope of any potential

rulemaking in response to the previously accepted petition. Furthermore, OSMRE will carefully consider the report and recommendations of the pending GAO audit of financial assurances currently underway. OSMRE will solicit public input prior to finalizing any decision on the need for further rulemaking.

### **3. Anticipated Benefits:**

Revising or rescinding the policy advisory would allow states to maintain greater flexibility in determining compliance with their approved self-bonding regulations. Determining that additional regulations are no longer necessary due to the corrective actions of state RAs and the industry will eliminate a lengthy, resource-consuming rulemaking process that would not produce benefits for years.

### **4. Measuring Success:**

OSMRE will continue to monitor the status of self-bonding issues in state programs in cooperation with the IMCC and other stakeholders (sureties, industry, and environmental groups).

## **OSMRE Enforcement Memorandum – Relationship between CWA and SMCRA**

### **1. Description:**

On July 27, 2016, the OSMRE Director issued a policy memo to staff providing direction on the enforcement of the existing regulations related to violations of the Clean Water Act caused by SMCRA-permitted operations and related issues, such as responses to self-reported violations of National Pollutant Discharge Elimination System (NPDES) limits and OSMRE responses to Notices of Intent (NOI) to sue alleging CWA violations at SMCRA-permitted operations. The policy memo specifically required an NOI to be processed as a citizen complaint, which requires OSMRE to issue a TDN to the state RA upon receipt of the NOI; in addition, the memo stated that a violation of water quality standards is also a violation of SMCRA regulations.

State regulatory authorities, as well as industry, have raised issues with this guidance document expressing concern with overlap and potential conflicts between Section 702(a)(3)<sup>1</sup> of SMCRA and the CWA. In addition, state RAs have raised concerns about new TDNs and related enforcement actions that have been issued in response to this policy guidance.

### **2. Opportunities to Address Burden or Other Issues of Concern:**

OSMRE will revisit the policy issues and concerns in cooperation with the IMCC and will revise or rescind the memorandum, as appropriate.

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<sup>1</sup> Nothing in this Act shall be construed as superseding, amending, modifying, or repealing the Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a), the National Environmental Policy Act of 1969 (42 U.S.C. 4321-47), or any of the following Acts or with any rule or regulation promulgated thereunder, including, but not limited to --  
(3) The Federal Water Pollution Control Act (79 Stat. 903), as amended (33 U.S.C. 1151-1175), the State laws enacted pursuant thereto, or other Federal laws relating to preservation of water quality.



### **3. Anticipated Benefits:**

The relationship between the CWA and SMCRA and the role of the state RAs in ensuring compliance in accordance with their approved SMCRA regulatory programs has been a longstanding issue; resolution will bring certainty to the state regulatory programs as well as for the industry.

### **4. Success:**

Review of the policy with IMCC member states will commence this calendar year; the revised or rescinded policy should be complete by the end of this calendar year. Due to the complexities and interest in this issue, OSMRE will consider seeking public input prior to finalizing the policy or a Directive.

## **Policy on Reclamation Fee for Coal Mine Waste (Uram Memo)**

### **1. Description:**

On July 22, 1994, then-Director Robert Uram issued a memorandum outlining the conditions under which OSMRE would waive the assessment of reclamation fees on the removal of refuse or coal waste material for use as a waste fuel in a cogeneration facility. Recently, the Pennsylvania regulatory authority (PADEP) requested that OSMRE update this policy as outlined below to incentivize reclamation efforts on sites with coal refuse reprocessing activities.

The PADEP believes that the reclamation fees deter operators from reclamation efforts on sites with coal refuse reprocessing activities. Coal refuse sites located within the Anthracite Coal Region are unable or have ceased the removal of coal refuse to be used as waste fuel at cogeneration facilities. This is partly or totally due to the assessment of reclamation fees on coal refuse used as waste fuel. In addition, PADEP recommended that OSMRE consider waste derived from filter presses at existing coal preparation plants to be a “no value<sup>2</sup>” product, which would encourage its use as a waste fuel rather than requiring it to be disposed in a coal refuse pile.

### **2. Opportunities to Address Burden or Other Issues of Concern:**

OSMRE will revisit the 1994 Uram Memo, with the goal of providing an incentive for use of coal refuse as a coal waste fuel. In addition, OSMRE will revisit the remaining incentives provided by the 2006 amendments to SMCRA at section 415, some of which apply specifically to removal or reprocessing of abandoned coal mine waste. Additional incentives pursuant to Section 415 will require promulgation of rules, and, therefore, input from the public will be solicited.

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<sup>2</sup> No value determinations are based upon the criteria established in the 1994 Uram Memorandum.

### **3. Anticipated Benefits:**

Providing additional incentives to industry to promote re-mining of coal refuse and other abandoned mine sites will provide for additional reclamation of abandoned mines that would not otherwise be accomplished through the AML program.

### **Measuring Success:**

OSMRE will initiate review of the Uram memo and the 2006 SMCRA re-mining incentives this calendar year. Specific benchmarks for measuring success, such as acres of additional reclamation performed, will be developed consistent with the implementation of the incentives.

### **E. Energy-Related Information Collections under the Paperwork Reduction Act**

OSMRE reviewed the current industry costs associated with the Paperwork Reduction Act and did not find any information collections that “potentially burden<sup>3</sup> the development or utilization of domestically produced energy resources” in accordance E.O. 13783. It should be noted that there will be no industry costs associated with information collection based on the Stream Protection Rule, due to the Congressional Review Act nullification of that final rule.

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<sup>3</sup> Burden “means to unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the siting, permitting, production, utilization, transmission, or delivery of energy resources” (Presidential Executive Order 13783, Promoting Energy Independence and Economic Growth, March 28, 2017).



**Template for Input into July Draft E.O. 13783 Energy Report**

*Please use the format provided by this template for your input required under Executive Order 13783.*

**I. Executive Summary**

FWS has identified five mitigation-related items to reduce potential burdens on development or use of domestically produced energy resources. They include: Compensatory Mitigation for Impacts to Migratory Bird Habitat, Regulations and Policy Governing Candidate Conservation Agreements with Assurances (CCAAs), FWS Mitigation Policy, Endangered Species Act (ESA) Compensatory Mitigation Policy, and the Interim Guidance on Implementing the Final ESA Compensatory Mitigation Policy.

**II. Recommendations for Alleviating or Eliminating Burdensome Actions**

**A. Climate Change Actions – n/a**

**B. Mitigation Actions**

**a. Mitigation Actions – Compensatory Mitigation for Impacts to Migratory Bird Habitat**

**1. Description.**

FWS has the authority to recommend, but not require, mitigation for impacts to migratory bird habitat under several Federal authorities. Pursuant to a Memoranda of Understanding with the Federal Energy Regulatory Commission (FERC), implementing the January 10, 2001, Executive Order (E.O.) 13186, FWS evaluates the impacts of FERC-licensed interstate pipelines to migratory bird habitat.

Mitigation may have been inappropriately required to avoid enforcement, delays, or other negative actions, and costs of the mitigation have been significant in some instances.

**2. Opportunities to Address Burden or Other Issues of Concern.**

FWS is developing Service-wide guidance to ensure the agency is consistent, fair and objective, appropriately characterizes the voluntary nature of compensatory mitigation for impacts to migratory bird habitat, and demonstrates a reasonable nexus between anticipated impacts and recommended mitigation. FWS anticipates it will take three months to finalize the guidance.

FWS is also currently responding to a Congressional document request related to this issue.

**3. Anticipated Benefits.**

Guidance will result in timely and practicable licensing decisions, while providing for the conservation of migratory Birds of Conservation Concern.

**4. Measuring Success.**

Success will be measured by timely issuance of licenses that contain appropriate recommendations that do not impose burdensome costs to developers.

**5. Interim Methods.**

FWS Regional and Field Offices will provide informal guidance through email and regularly scheduled conference calls to educate and remind staff of policy.

**b. Mitigation Actions - Regulations and Policy Governing Candidate Conservation Agreements with Assurances (CCAAs)**

**1. Description.**

CCAAs are developed to encourage voluntary conservation efforts to benefit species that are candidates for listing by providing the regulatory assurance that take associated with implementing an approved candidate conservation agreement will be permitted under section 10(a)(1)(A) for the ESA if the species is ultimately listed, and that no additional mitigation requirements will be imposed.

Recent revisions to the CCAA regulations and policy and the adoption of “net conservation benefit” as an issuance standard has been perceived by some to impose an unnecessary, ambiguous, and burdensome standard that will discourage voluntary conservation. There are also concerns with the preamble language that suggested that CCAAs may not be appropriate vehicles for permitting take of listed species resulting from oil and gas development activities.

**2. Opportunities to Address Burden or Other Issues of Concern.**

FWS will solicit public review and comment on the need and basis for a revision of the CCAA regulation and associated policy for the purpose of evaluating whether we should maintain or revise the current regulation and policy or reinstate the former ones. FWS anticipates that it will take three months to prepare the Federal Register Notice soliciting public review and comments. FWS will then publish the Federal Register Notice with a 60-day comment period. Based upon comments received, FWS will decide whether and how to revise the regulation and policy.

**3. Anticipated Benefits.**

The anticipated benefits will be ensuring the CCAA standard is clear and encourages stakeholder participation in voluntary conservation of candidate and other at-risk species.

**4. Measuring Success.**

Success will be measured by FWS providing timely assistance to developers if they seek a CCAA.

**5. Interim Methods.**

FWS Headquarters will provide Regional and Field Offices with informal guidance through email and regularly scheduled conference calls to remind staff of the regulation and policy review.

**c. Mitigation Actions - FWS Mitigation Policy**

**1. Description.**

In 2016, FWS finalized revisions to its 1981 Mitigation Policy, which guides FWS recommendations on mitigating the adverse impacts of land and water development on fish, wildlife, plants, and their habitats. The primary intent of the revised policy is to apply mitigation in a strategic manner that ensures an effective linkage with conservation strategies at appropriate landscape scales. The mitigation planning goal in the revised policy is consistent with the Presidential Memorandum on Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment (November 3, 2015) and seeks “to improve (i.e., a net gain) or, at minimum, to maintain (i.e., no net loss) the current status of affected resources, as allowed by applicable statutory authority and consistent with the responsibilities of action proponents under such authority.”

Industry believes the revised policy’s mitigation planning goal exceeds statutory authority.

**2. Opportunities to Address Burden or Other Issues of Concern.**

FWS will solicit public review and comment for the purpose of evaluating whether we should remove reference to net conservation benefit as a mitigation objective in appropriate circumstances and other references to the Presidential Memorandum on Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment, the Secretary of the Interior’s Order 3330 entitled “Improving Mitigation Policies and Practices of the Department of the Interior” (October 31, 2013), and the Departmental Manual Chapter (600 DM 6) on Implementing Mitigation at the Landscape-scale (October 23, 2015). FWS anticipates that it will take three months to prepare the Federal Register Notice

soliciting public review and comment on the policy. FWS will then publish the Federal Register Notice with a 60-day comment period. Based upon comments received, FWS will decide whether and how to revise the policy.

**3. Anticipated Benefits.**

The anticipated benefits will be timely and practicable mitigation recommendations by FWS staff to energy developers (and others) that promote conservation of species and their habitats.

**4. Measuring Success.**

Success will be measured by incorporation of recommendations without delays to the permitting or licensing process.

**5. Interim Methods.**

FWS Headquarters will provide FWS Regional and Field Offices informal guidance through email and regularly scheduled conference calls to remind staff of the policy review.

**d. Mitigation Actions - FWS ESA Compensatory Mitigation Policy**

**1. Description.**

In 2016, FWS finalized its Endangered Species Act (ESA) Compensatory Mitigation Policy (CMP), which steps down and implements the 2016 revised FWS Mitigation Policy (including the mitigation planning goal). The CMP was established to improve consistency and effectiveness in the use of compensatory mitigation as recommended or required under the ESA. Its primary intent is to provide FWS staff with direction and guidance in the planning and implementation of compensatory mitigation under the ESA.

Industry believes the mitigation planning goal exceeds statutory authority.

**2. Opportunities to Address Burden or Other Issues of Concern.**

FWS will solicit public review and comment for the purpose of evaluating whether we should remove reference to net conservation benefit as a mitigation objective in appropriate circumstances and other references to the Presidential Memorandum on Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment, the Secretary of the Interior's Order 3330 entitled "Improving Mitigation Policies and Practices of the Department of the Interior," and the Departmental Manual Chapter on Implementing Mitigation at the Landscape-scale. FWS anticipates that it will take three months to prepare the Federal Register Notice soliciting public review and comment on the policy. FWS will then publish

the Federal Register Notice with a 60-day comment period. Based upon comments received, FWS will decide whether and how to revise the policy.

**3. Anticipated Benefits.**

The anticipated benefits will be timely and practicable mitigation recommendations by FWS staff to energy developers (and others) that promote conservation of species and their habitats.

**4. Measuring Success.**

Success will be measured by incorporation of recommendations without delays to the permitting or licensing process.

**5. Interim Methods.**

FWS Headquarters will provide FWS Regional and Field Offices informal guidance through email and regularly scheduled conference calls to remind staff of the policy review.

**e. Mitigation Actions - Interim Guidance on Implementing the Final ESA Compensatory Mitigation Policy**

**1. Description.**

This document provides interim guidance for implementing the Service's CMP. The guidance provides operational detail on the establishment, use, and operation of compensatory mitigation projects and programs as tools for offsetting adverse impacts to endangered and threatened species, species proposed as endangered or threatened, and designated and proposed critical habitat under the ESA.

Industry believes the guidance relies upon a mitigation planning goal that exceeds statutory authority.

**2. Opportunities to Address Burden or Other Issues of Concern.**

Within 6 months of completing revisions to the Endangered Species Act Compensatory Mitigation Policy (CMP) (or deciding revisions to the CMP are not necessary), FWS will revise the interim implementation guidance (to be consistent with the revised CMP) and make it available for public review and comment in the Federal Register for 60 days. Within 6 months of close of the comment period, FWS will publish the final implementation guidance in the Federal Register (Note: we anticipate that the implementation guidance may need to be reviewed under the Paperwork Reduction Act, which may affect the timeline).

**3. Anticipated Benefits.**

The anticipated benefits will be timely and practicable mitigation recommendations by FWS staff to energy developers (and others) that promote conservation of species and their habitats.

**4. Measuring Success.**

Success will be measured by incorporation of recommendations without delays to the permitting or licensing process.

**5. Interim Methods.**

FWS Headquarters will issue a memorandum to Regional and Field staff reiterating the limited applicability of the CMP's mitigation planning goal and that decisions related to compensatory mitigation must comply with the ESA and its implementing regulations.

**C. Coal-Related – n/a**

**D. Indian Energy Actions – n/a**

**E. Energy-Related Information Collections under the Paperwork Reduction Act – n/a**

**F. Grant Programs - n/a**

**G. Restrictions in Acquisition Policy and Regulations – n/a**

**H. Other Actions that Potentially Burden Development or Use of Energy**

*Identify any other action identified that does not fit into one of the categories listed above, with the potential to burden development or use of domestically produced energy resources. For **each** such action, provide:*

**1. Description.** Bald and Golden Eagle Protection Act (16 USC 668-668d) non-purposeful take regulations and implementing guidance, 50 CFR 22.26-27. Under law, it is illegal to “take” an eagle unless authorized by the Secretary in a manner “compatible with the preservation” of eagles. The wind industry believes the 2009 regulations and their implementation were burdensome due to the lengthy time FWS has taken to process permits (multiple years) and the requirements imposed by those permits (which increase costs).

**2. Opportunities to Address Burden or Other Issues of Concern.** FWS completed revisions to the eagle incidental regulations in 2016 specifically to address issues from the previous regulations and in response to industry concerns. OMB deemed the revisions "deregulatory" compared to the previous regulations. Key changes include lengthening the maximum permit term from 5 to 30 years; broadening available options for compensatory mitigation; and analyzing the effects of the rule in a

Programmatic Environmental Impact Statement, allowing tiering of individual permit decisions, reducing project-level analysis and associated processing time. The Service is currently developing implementation guidance. The guidance will take a number of different forms which will take different durations to complete, and will be subject to different public input processes depending on the scope and complexity of the issue being addressed. Implementation guidance topics include: technical updates of data used in the fatality model for wind facilities, monitoring requirements, NEPA, compensatory mitigation, electric transmission guidelines, and procedures for 5-year reviews.

3. **Anticipated Benefits.** Policy and procedural improvements are intended to comply with the Eagle Act while reducing FWS and permittee workloads in processing permits. The key benefits are reduced permit processing time and greater regulatory certainty.
4. **Measuring Success.** A key benchmark of success will be reducing the length of time to process long-term permit applications.
5. **Interim Methods.** As FWS is developing implementation guidance, field offices continue to process permit applications. To address emerging policy questions from individual applications, the FWS hosts a weekly internal meeting to discuss and resolve.

## **Information Memorandum for the Acting Assistant Secretary for Fish, Wildlife, and Parks**

**Date:** April 26, 2017

**From:** Herbert C. Frost, Acting Deputy Director, Operations, National Park Service

**Telephone:** 202-208-3818

**Subject:** Preliminary response to the deliverable outlined in section 5(c)(iii) of Secretarial Order 3349 – “American Energy Independence”

### **I. Introduction**

This memorandum serves as the report from the National Park Service (NPS) on the review of the consistency of the final rule entitled “General Provisions and Non-Federal Oil and Gas Rights” with the policy set forth in Section 1 of the March 28, 2017 Presidential Executive Order entitled “Promoting Energy Independence and Economic Growth.”

### **II. Background**

The March 28, 2017, Presidential Executive Order entitled "Promoting Energy Independence and Economic Growth" directed agency heads to review “all existing regulations, orders, guidance documents, policies, and any other similar actions...that potentially burden the development or use of domestically produced energy resources....”

On March 29, 2017, the Secretary signed Order 3349, “American Energy Independence,” which directed the NPS to review the final rule entitled, “General Provisions and Non-Federal Oil and Gas Rights,” and report on whether the rule is fully consistent with the policy set forth in Section 1 of the Executive Order.

### **III. Discussion**

The NPS has reviewed the final rule entitled, “General Provisions and Non-Federal Oil and Gas Rights,” 81 Fed. Reg. 77972 (Nov. 4, 2016) and has determined that the rule is consistent with the policy set forth in Section 1 of the March 28, 2017 Executive Order. The 36 CFR Part 9 Subpart B (9B) regulations allow for development of nonfederal oil and gas resources in national parks while assuring that the public interest in preserving and protecting the natural and cultural resources of these areas is maintained. Detailed information is provided below organized under each of the subsections from Section 1 of the Executive Order.

*(a) It is in the national interest to promote clean and safe development of our Nation's vast energy resources, while at the same time avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation. Moreover, the prudent development of these natural resources is essential to ensuring the Nation's geopolitical security.*

- The 9B regulations promote clean and safe development of oil and gas resources in parks by allowing nonfederal oil and gas owners access to develop their mineral rights consistent with



laws governing the National Park System and the public interest in conserving and enjoying these areas.

- The updates to the 9B regulations do not impose a significant economic impact upon any operator conducting oil and gas activities in parks. The NPS' Cost-Benefit and Regulatory Flexibility Analysis (September 21, 2015) found the cost of compliance was 0.03 percent of average annual receipts for such an operator.
- Production from wells in the National Park System accounted for 0.03 percent of the total crude oil and 0.02 percent of the total natural gas produced in the United States in 2011.
- The 9B updates ensure that all operations in national parks meet basic operating standards. Prior to this update, 60 percent of all operations were unregulated. These previously unregulated operations had documented spills that impacted both visitor health and safety and park resources.
- Within the National Park System there are 98 different operators conducting oil and gas operations in twelve parks. More than 90 percent of these operators are small businesses that employ less than 50 people each.
- These updates only require an operator to submit information necessary to evaluate potential effects of the proposed operations on park resources and visitor health and safety.
- The updated regulations provide for prompt action on permit applications which reduces the regulatory burden upon operators. NPS must complete an Initial Review of an Operator's Permit application within 30 days of receipt of the application to determine if all required information is included. As part of the permit review process, the NPS is required to comply with all applicable laws, including the National Environmental Policy Act, Endangered Species Act, and National Historic Preservation Act. Once these legal requirements have been met, the NPS must take Final Action on the operator's permit application within 30 days. The average time to reach Final Action can take from two months to one year depending on the scope and complexity of the proposed operation, the responsiveness of the operator in providing the required information, and the time it takes the NPS to comply with other applicable laws.
- In the 38 years of managing non-federal oil and gas operations in parks, the NPS has never denied a permit application. NPS has worked and will continue to work with operators to implement avoidance and mitigation measures that allow development of oil and gas rights while protecting park resources and visitor health and safety.
- NPS and U.S. Fish and Wildlife Service (FWS) both promulgated final nonfederal oil and gas rules in 2016. To minimize regulatory burdens on oil and gas operators, the NPS worked closely with the FWS to ensure that the regulations are as consistent as possible. The rules have similar objectives: resource and use protections, regulatory structure based on performance standards, operations permit requirements, financial assurance requirement, monitoring and compliance, and other terms and conditions. However, because of different legal authorities, FWS developed some provisions in its rule that addressed oil and gas activity within Refuges differently to meet the FWS's specific needs.

*(b) It is further in the national interest to ensure that the Nation's electricity is affordable, reliable, safe, secure, and clean, and that it can be produced from coal, natural gas, nuclear material, flowing water, and other domestic sources, including renewable sources.*

- Because of the limited production from parks (0.02 percent of the total natural gas produced in the U.S. in 2011), the updates to the 9B regulations will not have a measurable effect on the Nation's electricity supply.

*(c) Accordingly, it is the policy of the United States that executive departments and agencies (agencies) immediately review existing regulations that potentially burden the development or use of domestically produced energy resources and appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources beyond the degree necessary to protect the public interest or otherwise comply with the law.*

- Where nonfederal oil and gas rights exist within national parks, the NPS recognizes these rights and allows for reasonable right of access using the 9B regulations. The 9B regulations do not unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the development of oil and gas resources.
- The 9B regulations are necessary to protect the public interest in accessing and enjoying national parks. As a result of the updated regulation, park visitors benefit from improved health, safety, and environmental conditions that reduce the risk of exposure to physical and chemical hazards. The 9B update helps meet visitor's expectation of enjoying natural conditions while recreating in national parks.
- The 9B regulations eliminated the \$200,000 bonding cap and replaced it with the reasonable cost of reclamation to protect the American taxpayers from risk of liability to plug and reclaim well sites. Under prior rules the risk to taxpayers was estimated at \$12 million for inadequately bonded wells across the National Park System. Additionally, 70 previously unregulated operations have not produced in over 15 years. Plugging and reclamation of these wells would result in approximately 200 acres of disturbed lands being restored to natural conditions and processes.

*(d) It further is the policy of the United States that, to the extent permitted by law, all agencies should take appropriate actions to promote clean air and clean water for the American people, while also respecting the proper roles of the Congress and the States concerning these matters in our constitutional republic.*

- The 9B updates recognize and respect the proper roles of the Congress and the states. The 9B updates do not establish new clean air or clean water standards, the responsibility for which has been delegated by Congress to other agencies.
- The updated 9B regulations promote clean air and water in national parks through performance-based operating standards rather than mandating specific actions the operator must take.
- State oil and gas programs vary widely with regard to protection of the surface estate but generally defer to the surface owner and the operator on these issues. The NPS has been charged with protection of the U.S. surface interest and the 9B regulations serve as the method by which the NPS engages operators to protect the federal interest.

*(e) It is also the policy of the United States that necessary and appropriate environmental regulations comply with the law, are of greater benefit than cost, when permissible, achieve*

*environmental improvements for the American people, and are developed through transparent processes that employ the best available peer-reviewed science and economics.*

- In the NPS Organic Act, Congress required the NPS to promote and regulate the use of the National Park System for the purpose of conserving the scenery, natural and historic objects, and wild life in the System units and to provide for the enjoyment of those things in such manner that will leave them unimpaired for the enjoyment of future generations. The 9B regulations are a necessary and appropriate exercise of the regulatory authority granted to the NPS by Congress to achieve this goal. The 9B regulations allow for the responsible exercise of private property rights in a manner that will conserve the scenery, natural and historic objects, and wild life in national parks. NPS's authority to promulgate the 9B regulations has been recognized as a valid exercise of NPS's Organic Act authority by the U.S. District Court (S.D. Tex.) and the United States Court of Appeals for the Fifth Circuit.
- The NPS's Cost-Benefit and Regulatory Flexibility Analysis (September 21, 2015) found that the benefits of the regulatory updates are greater than the associated costs. Based on the magnitude of quantified costs, and the level of benefits described in the CBA (e.g., improved resource conditions, reduced risk of exposure to physical and chemical hazards, and adequate reclamation bonding to protect taxpayers' interest), NPS concluded that the benefits associated with implementing the updated rule justifies the associated costs.
- NPS began a transparent and responsive rulemaking process in November, 2009. Significant milestones in the rulemaking process include:
  - Advance Notice of Proposed Rulemaking – published November 25, 2009
  - Notice of Intent to Prepare EIS – published December 30, 2010
  - Cost-Benefit and Regulatory Flexibility Analysis – completed September 21, 2015
  - Proposed Rule - published October 26, 2015
  - Record of Decision for EIS – published October 20, 2016
  - Final Rule – published November 4, 2016
  - Effective Date of Rule – December 5, 2016
- To engage as many stakeholders as possible at the start of the 60 day public comment period for the proposed rule, the NPS distributed over 1,000 newsletters seeking comments from non-governmental organizations, individuals, industry groups, Alaska native corporations, and 22 state oil and gas regulatory agencies. The NPS also hosted a pre-recorded webinar describing the proposed rulemaking. This online webinar soliciting public comment on the DEIS and the proposed rule and was open to any member of the public.
- The NPS received 20 comment letters on the proposed rule during the comment period. NPS responded to all comments in the "Summary of and Responses to Public Comments" section of the preamble to the Final Rule.
- Through the public comment process, the NPS decided not to apply the 9B regulations to parks in Alaska. This exempts 54 million acres or approximately two-thirds of NPS lands from the regulations.

U.S. DEPARTMENT OF THE INTERIOR

# Draft Final Report:

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## Review of Interior Actions That Potentially Burden Domestic Energy

**Secretary of the Interior**

July 28, 2017

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DRAFT

**Report of the Secretary of the Interior**  
**Draft Final Report: Review of Interior Actions that Potentially Burden Domestic Energy**

## **I. Purpose of this Report**

Energy is an essential part of American life and a staple of the world economy. Achieving American energy dominance begins with recognizing that we have vast untapped domestic energy reserves. For too long America has been held back by burdensome regulations on our energy industry. The Department is committed to an America-first energy strategy that lowers costs for hardworking Americans and maximizes the use of American resources, freeing us from dependence on foreign oil.

Secretary Zinke, May 1, 2017, Secretary's Order 3351 Strengthening the Department of the Interior's Energy Portfolio

This draft report describes Interior's progress in implementing Executive Order (E.O.) 13783, *Promoting Energy Independence and Economic Growth*, dated March 28, 2017. E.O. 13783 requires the head of each agency to carry out a review of all agency actions that potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources. *See* E.O. 13783, section 2(a). On May 8, 2017, the Office of Management and Budget (OMB) issued guidance to agencies on the contents of a draft report. *See* OMB Guidance M-17-24 (May 8, 2017). The Secretary of the Interior has aggressively pursued a comprehensive review of Interior's energy activities and this draft final report details the results of this review.

## **II. Interior's Role in Domestic Energy Production, Development, and Use**

Interior is the steward and manager of America's natural resources, including oil, gas, coal, hydropower, and renewable energy resources. Interior manages lands, subsurface rights and offshore areas that produce approximately 19 percent of the Nation's energy. Development on public lands increases domestic energy production, provides alternatives to overseas energy resources, creates jobs, and enhances the Nation's energy security. Interior's Office of Natural Resources Revenue (ONRR) collects an average of over \$10 billion dollars annual revenue from onshore and offshore energy production, one of the Federal government's largest sources of non-tax revenue.



Nine of Interior’s 10 bureaus have energy programs and responsibilities:

- The Bureau of Land Management (BLM) administers onshore energy and subsurface minerals;
- The Office of Surface Mining Reclamation and Enforcement (OSMRE) works with States and tribes to oversee environmentally sound coal mining operations.;
- The Bureau of Ocean Energy Management (BOEM) oversees offshore oil, gas, and wind development;
- The Bureau of Safety and Environmental Enforcement (BSEE) is the lead federal agency charged with improving safety and ensuring environmental protection related to the offshore energy industry, primarily oil and natural gas, on the U.S. Outer Continental Shelf (OCS);
- The Bureau of Reclamation (BOR) is the second largest producer of hydroelectric power in the United States, generating over 40 million megawatt-hours of electricity each year;
- The Bureau of Indian Affairs (BIA) oversees leasing of Tribal and Indian land for energy development;
- The Office of Natural Resources Revenue (ONRR) collects revenue from energy production and development.

The Fish and Wildlife Service (FWS) and National Park Service (NPS), while not directly involved in the production or development of energy as part of their mission, may have Federal or nonfederal oil and gas or mineral inholdings and have the ability to reduce potential burdens on domestic energy production, development, or use.

### **III. Immediate Action – Secretary’s Orders**

A United States that is a leader in developing its energy resources is less dependent on other nations, leading to a stronger America. Interior is committed to an America-First energy strategy. Secretary Zinke recognizes that development of energy resources on public lands increases the Nation’s domestic energy supply, provides alternatives to overseas energy resources, creates jobs, and enhances national security. Eliminating harmful regulations and unnecessary policies will require a sustained and focused effort. Recognizing this, Secretary Zinke has issued six Secretary’s Orders to improve domestic onshore and offshore energy production. To ensure energy policies receive the highest level attention across Interior, the Secretary established the Counselor to the Secretary for Energy Policy to coordinate the energy policy of Interior, including, but not limited to, promoting responsible development of energy on public lands managed and administered by Interior, developing strategies to eliminate or minimize regulatory burdens that unnecessarily encumber energy, and promoting efficient and effective processing of energy-related authorizations, permits, regulations, and agreements. *See* Secretary’s Order 3351, “Strengthening the Department of the Interior’s Energy Portfolio” (May 1, 2017). Establishing this position that reports directly to the Secretary assures that developing America’s energy resources in a responsible way to create jobs and enhance the energy security of the United States will remain a central priority. The remaining six Secretary’s orders are:



- Secretary’s Order 3348 – Concerning the Federal Coal Moratorium;
- Secretary’s Order 3349 – Promoting Energy Independence;
- Secretary’s Order 3350 – America-First Offshore Energy Strategy;
- Secretary’s Order 3352 – National Petroleum Reserve – Alaska;
- Secretary’s Order 3353 – Greater Sage-Grouse Conservation and Cooperation with Western States; and
- Secretary’s Order 3354 – Supporting and Improving the Federal Onshore Oil and Gas Leasing Program and Federal Solid Mineral Leasing Program.

These orders direct Interior bureaus and offices to take immediate and specific actions to identify and alleviate or eliminate burdens on domestic energy development. Within this framework, bureaus have identified actions and, in some cases, already made progress in alleviating or eliminating the energy burdens.

#### **A. Secretary’s Order 3348 – Concerning the Federal Coal Moratorium**

One of Secretary Zinke’s first acts was to sign Secretary’s Order 3348, “Concerning the Federal Coal Moratorium” (March 29, 2017), which removed the moratorium of the Federal coal leasing program by revoking a prior Secretary’s Order (Secretary’s Order 3338, “Discretionary Programmatic Environmental Impact Statement to Modernize the Federal Coal Program”). Order 3348 promotes American energy security, job creation, and proper conservation stewardship. It directs BLM to process coal lease applications and modifications expeditiously and directs Interior bureaus and offices to make appropriate changes to policy and guidance documents to further President Trump’s policy of promoting American energy independence and economic growth. See further discussion below at IV.A.iii, D.i., and E.

In addition to lifting the coal moratorium, Secretary Zinke took other actions to advance American energy independence. In announcing these actions he said, “Today I signed a series of directives to put America on track to achieve the President’s vision for energy independence and bringing jobs back to communities across the country.” These directives foster responsible development of coal, oil, gas, and renewable energy on federal and Tribal lands and initiate review of agency actions directed by President Trump’s Executive Order entitled “Promoting Energy Independence and Economic Growth.”

#### **B. Secretary’s Order 3349 – Promoting Energy Independence**

The most overarching Secretary’s Order reducing burden on energy development is Secretary’s Order 3349, “American Energy Independence” (March 29, 2017), which directed bureaus to examine specific actions impacting oil and gas development, and any other actions affecting other energy development. It revoked Secretary’s Order 3330, “Improving Mitigation Policies and Practices of the Department of the Interior”, and directed bureaus and offices to review all actions taken pursuant to that order for possible reconsideration, modification, or rescission. It also directed each bureau and office to review actions taken regarding rescinded Executive Orders related to climate change. Further, it directed review of the following specific actions impacting energy development:

- the BLM hydraulic fracturing rule (see discussion below under IV.A.i.),
- the BLM venting and flaring rule, (see discussion below under IV.A.ii.),
- the NPS oil and gas rule, and (see discussion below under IV.F.), and
- the FWS oil and gas rule (see discussion below under IV. G.).

### **C. Secretary’s Order 3350 – America-First Offshore Energy Strategy**

This Order enhances opportunities for energy exploration, leasing, conservation stewardship, and development on the Outer Continental Shelf, thereby providing jobs, energy security, and revenue for the American people.

It directs BOEM and BSEE to undertake specific actions. See discussion below at IV.B and C.

### **D. Secretary’s Order 3352 – National Petroleum Reserve – Alaska**

This Order provides for clean and safe development of oil and gas resources in the National Petroleum Reserve in Alaska, recognizing that prudent development of these resources is essential to ensuring the nation’s geopolitical security. See discussion below at IV.J.

### **E. Secretary’s Order 3353 – Greater Sage-Grouse Conservation and Cooperation with Western States**

Sage Grouse protections affect energy development because these activities often share the same land across the eleven western states and 67 million acres of Federal land that are affected by Sage Grouse habitat. This Order establishes a Sage Grouse Review Team that includes representatives from BLM, FWS, and the U.S. Geological Survey (USGS) to review the 2015 Sage-Grouse Plans and associated policies, giving appropriate weight to the value of energy and other development of public lands within BLM’s overall multiple-use mission and to be consistent with the policy set forth in Secretary’s Order 3349, “American Energy Independence.” See discussion below at IV.A.vii.

### **F. Secretary’s Order 3354 – Supporting and Improving the Federal Onshore Oil and Gas Leasing Program and Federal Solid Mineral Leasing Program**

This Order intends to ensure that quarterly oil and gas lease sales are consistently held and to identify ways to promote the exploration and development of Federal onshore oil and gas and solid mineral resources, including improving quarterly lease sales, enhancing the federal onshore solid mineral leasing program, and improving the permitting processes. See discussion below at IV.A.

Details of progress in accordance with the aforementioned Executive Orders and Secretary’s Orders are described below, as well as relevant proposed actions that are currently under review. Prior to reaching a final determination regarding any proposed action, Interior may be required to comply with the notice and comment requirements of the Administrative Procedure



Act or other laws and regulations, and will weigh the results of such procedures accordingly in its decision making process.

## IV. Results of Interior’s Review of Potentially Energy-Burdening Actions

### A. Bureau of Land Management (BLM)

The Bureau of Land Management administers more land than any other Federal agency, consisting of more than 245 million surface acres and 700 million acres of subsurface mineral development. In response to E.O. 13783 and Secretary’s Orders 3348, 3349, and 3354, BLM is revising and reforming its leasing processes, improving the Coal Management program, and delaying, revising or rescinding burdensome regulations and policies to improve domestic energy production and support jobs.

Below is a list of specific actions BLM is undertaking to reduce burdens on the production of energy on BLM managed resources.

#### *i. Review of the Hydraulic Fracturing rule*

Executive Order 13783 required Interior to review the final rule entitled, “Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands,” 80 Fed. Reg. 16128 (Mar. 26, 2015). Secretary’s Order 3349 directed BLM to undertake that review. (b) (5) [REDACTED], BLM published a proposed rule to rescind the 2015 hydraulic fracturing rule because the compliance costs of the existing 2015 rule are not justified. Thirty two states and some tribes with oil and gas resources regulate hydraulic fracturing. Thus rescinding the Rule has the potential to reduce regulatory burdens by enabling oil and gas operations to occur under one set of regulations, rather than two. (b) (5) [REDACTED]

[REDACTED] (b) (5) [REDACTED]

Interior has identified this proposed rescission as a deregulatory action under E.O. 13771.

#### *ii. Temporarily Suspend or Postpone Certain Requirements and Review to Rescind or Revise the Venting and Flaring Rule*

Executive Order 13783 required Interior to review the final rule entitled, “Oil and Gas; Waste Prevention, Production Subject to Royalties, and Resource Conservation,” 81 Fed. Reg. 83008 (Nov. 18, 2016), also known as the “Venting and Flaring” rule. Secretary’s Order 3349 ordered BLM to review the rule and report to the Assistant Secretary – Land and Minerals Management on whether the rule is fully consistent with the policy expressed in E.O. 13783.

The BLM conducted an initial review of the rule and found that it was inconsistent with the policy stated in E.O. 13783 that “it is in the national interest to promote clean and

safe development of our nation's vast energy resources, while at the same time avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation.” The BLM recognizes that the 2016 final rule poses a substantial burden on industry, particularly those requirements that are set to become effective on January 17, 2018. (b) (5)

(b) (5)

. The BLM is preparing a proposed rule to seek comment on delaying the implementation dates of certain requirements that have yet to be implemented until July 17, 2019, to reduce the regulatory burden on the energy industry. This will provide industry additional time to plan for and engineer responsive infrastructure modifications that will comply with the regulation. The BLM expects to complete the revision of the regulation in the fourth quarter of FY 2018.

(b) (5)

The BLM will work with industry to develop metrics, including key timelines or benchmarks, and the reduction of flaring from Federal and Indian lands over time.

Following up on its initial review, BLM is currently reviewing the 2016 final rule to develop an appropriate proposed revision that would propose to align the 2016 final rule with the policies set forth in E. O. 13783. The BLM anticipates modifying the rule to eliminate overlap with Environmental Protection Agency (EPA) provisions and incentivize the capture of associated gas production from oil wells and other fugitive gas sources from production that occurs on Federal and Indian lands.

The BLM has identified the delay of effective date rulemaking as a deregulatory action under E.O. 13771.

*iii. Revise Oil and Gas; Onshore Orders Nos. 3, 4 and 5*

The burdens placed on industry through these three new regulations are being reviewed as directed under E.O. 13783. These three rulemakings, which were promulgated and issued concurrently, updated and replaced BLM's Onshore Orders for site security, oil measurement, and gas measurement regulations, respectively, that had been in place since 1989. They are codified in the Code of Federal Regulations at 43 CFR parts 3173, 3174, and 3175. External and internal oversight reviews prompted these rulemakings and found that many of the BLM's production measurement and accountability policies were outdated and inconsistently applied. The new rules also address some of the Government Accountability Office (GAO) concerns for high risk with regard to Interior's production accountability. These three regulations impose new cost burdens on operators as a result of oil and gas facility infrastructure changes. The cost estimates for each individual rule are as follows: Order 3, Site Security: \$31.2 million in one-time costs, plus an \$11.7 million increase in annual operating costs. Order 4, Oil



Measurement: \$3.3 million in one-time costs, plus a \$4.6 million increase in annual operating costs. Order 5, Gas Measurement: \$23.3 million one-time cost, plus \$12.1 million increase in annual operating costs. The new regulations also provide a process for approving new technology that meets defined performance goals. Some provisions of the rule may have added regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation.

The BLM is currently assessing the rules to determine if additional revisions are needed beyond the already-implemented phase-in period for certain provisions, the ability for industry to introduce new technologies through a defined process, rather than through an exception request, and the built-in waivers or variances. The BLM expects to complete its assessment of possible changes to alleviate burdens that may have added to constraints on energy production, economic growth and job creation by the end of the fourth quarter of FY 2017.

The new regulations have built in any necessary waivers or variances. The BLM's establishment of a phase-in period for the new site security and production measurement regulations is an interim measure. The BLM will measure success over the phase-in period in terms of the production measurements, royalties paid, a reduction in under-reporting of production, and greater site security for production facilities.

*iv. Revise and Replace Policy, Oil and Gas; IM 2010-117, "Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews"*

This policy will be replaced with revised guidance for the purpose of establishing greater efficiencies in the oil and gas leasing process. Policy Instruction Memorandum (IM) 2010-117 established a process for leasing oil and gas resources on Federal lands. The BLM intended the IM to reduce the backlog of unissued leases. However, the IM has resulted in longer time frames in analyzing and responding to protests and appeals, as well as longer lead times for BLM to clear and make available parcels for oil and gas lease sales. It has also resulted in increased workload and staffing needs to conduct additional upfront environmental analysis.

The BLM has undertaken an effort to revise and reform its leasing policy and to streamline the leasing process, from beginning (i.e. receipt of an Expression of Interest) to end (competitively offering the nominated acreage in a lease sale). Under existing policies and procedures, the process can take up to 16 months (and sometimes longer) from the time lands are nominated to the time a lease sale occurs. The BLM is examining ways to significantly reduce this time by as much as 8-10 months. The BLM plans to complete revisions to the leasing process in the first quarter of FY 2018.

A shorter period from nomination to sale will reduce the number of nominated acres awaiting competitive sale at any given time and will increase industry certainty regarding the acreage it holds. As a result, industry will be able to plan for and execute exploration and production strategies earlier, and respond more effectively to changing market conditions.

Reducing the average time from acreage nomination to lease sale will be BLM's measure of success. The BLM does not control what acreage industry nominates

because market conditions can fluctuate dramatically; therefore, total nominated acreage awaiting sale is not likely to be a measure of success.

Until the policy revisions are completed, BLM is setting quarterly lease sale acreage targets to address the acreage currently nominated. The BLM is also identifying ways to augment staff support for potential sales in those offices with the greatest numbers of acres nominated.

*v. Rescind Policy, Oil and Gas; IM 2013-101, “Oil and Gas Leasing Reform – Master Leasing Plans (MLPs)”*

The policy announced the incorporation of Master Leasing Plans (MLPs) in the oil and gas leasing process, further explained in Chapter V of the BLM Handbook H-1624-1, entitled “Planning for Fluid Mineral Resources.” The IM establishes a process for integrating an MLP into the land use planning process. The BLM has extended this IM several times while the BLM completes the public scoping and analysis for MLPs. An unintended consequence of this policy has been that many areas open to oil and gas leasing have been deferred from leasing while they await the completion of the MLP process.

The BLM has undertaken an effort to revise the leasing reform and MLP policy and to re-establish the BLM Resource Management Plans (RMPs) as the source of lands available for fluid minerals leasing. The BLM is currently evaluating existing MLP efforts with the goal of ending this approach. The BLM expects to rescind this IM and complete the revision of the above BLM Handbook, as well as any other relevant BLM handbooks, in the first quarter of FY 2018.

Because this change will re-establish the RMP as the source of land allocation decisions for fluid minerals, it will result in more streamlined National Environmental Policy Act (NEPA) analysis and a shorter timeframe for acreage nominations to make it to a competitive lease sale. Since extra time and NEPA analysis adds to uncertainty for industry, removing these process-related steps has the effect of decreasing uncertainty.

The primary measure of success in removing regulatory burden from the rescission of the MLP policy will be in the elimination of related nominated acreage sale deferral pending completion of MLP NEPA. While there will continue to be acreage sale deferrals for various reasons, completion of MLP NEPA will no longer be one of them. The time frames will be shorter.



*vi. Revise Policy, Oil and Gas; IM 2013-177, “National Environmental Policy Act (NEPA) Compliance for Oil and Gas Lease Reinstatement Petitions”*

This IM directs all BLM oil and gas leasing Field Offices to: 1) ensure RMP conformance; 2) evaluate the adequacy of existing NEPA analysis and documentation; and 3) complete any necessary new or supplemental NEPA analysis and documentation before approving a Class I or Class II oil and gas lease reinstatement petition. This IM has resulted in additional analysis and review time that often involves another surface management agency and, in some instances, has led to adding new lease stipulations prior to lease reinstatement.

Lease reinstatements were previously considered a ministerial matter, entailing a commensurate level of review and process to complete. However, IM 2013-177 changed that in significant ways, resulting in additional NEPA review and significantly greater timeframes for completing the reinstatement. Rescinding or modifying this policy will greatly reduce decision-making timeframes on lease reinstatement requests. The BLM expects to complete review of this policy in the first quarter of FY 2018.

The BLM expects that changes to this policy will refocus the emphasis back to existing NEPA analysis and information, which will significantly shorten the time it takes to consider and process a lease reinstatement request. The policy changes will provide greater certainty and reduced expense for energy development companies and result in production occurring sooner.

The BLM will measure the reduction in burden in terms of the average time it takes to consider a complete lease reinstatement request.

Similar to MLPs, in the interim, the BLM must identify and evaluate the status of each current lease reinstatement request in order to determine whether and how to expedite review and processing. There are no other interim measures, waivers or variances that are relevant to the process.

*vii. Revise Policy, Oil and Gas: IM 2016-140, “Implementation of Greater Sage-grouse Resource Management Plan Revisions or Amendments – Oil & Gas Leasing and Development Sequential Prioritization”*

Policy IM 2016-140 is being reviewed for the purpose of enhancing consistency and certainty for oil and gas development in areas of sage-grouse habitat as directed by Executive Order 13783. This IM provides guidance on prioritizing implementation decisions for BLM oil and gas leasing and development, to be consistent with Approved Resource Management Plan Amendments for the Rocky Mountain and Great Basin Greater Sage-grouse Regions and nine Approved Resource Management Plans in the Rocky Mountain Greater Sage-grouse Region (collectively referred to as the Greater Sage-grouse Plans). The IM applies to activities in the areas covered by both the Rocky Mountain and Great Basin Regions Records of Decision, issued by the BLM in September 2015, and also contains reporting requirements for communication between BLM State Offices and the WO. The IM may have added administrative burdens since it requires additional analysis and staff time to screen parcels and weigh potential

impacts to the Greater Sage-grouse before the parcels are offered for leasing. It also requires additional analysis and staff time to process drilling permit approvals near Greater Sage-grouse areas.

The BLM's effort to avoid listing of the sage-grouse as an endangered species has affected many programs and a large area geographically. With new technologies and capabilities, such as long-reach horizontal boreholes in the oil and gas industry, the impacts need not be as significant as once perceived. Likewise, the administrative burden is better understood and is likely less than once thought. Efforts are underway to better understand these conditions and define ways in which energy production and sage-grouse protection may continue to co-exist. Greater consistency and predictability will provide greater stability for industry. The BLM is currently assessing the policy to determine what revisions are needed and expects to complete this review in the fourth quarter of FY2017.

When the BLM completes this effort, industry will have greater certainty in leasing, exploration and production activities due to availability of acreage for oil and gas development and a defined process and timeframe for consideration of Greater Sage-grouse impacts.

The BLM will measure success by assessing changes in industry's interest in nominating acreage for competitive sale and developing existing leases in areas affected by the Greater Sage-grouse amendments to RMPs. As industry increases its understanding and gains confidence in the consistency and predictability of BLM actions relative to Greater Sage-grouse, then acreage nominations, permit requests, and development should stabilize and be tied to market forces rather than tied to BLM Greater Sage-grouse decisions.

The BLM has been processing acreage nominations in Greater Sage-grouse areas and making them available for competitive sale. In addition, existing leases are being developed. This is evidence, in the interim, that both the BLM and industry are figuring out how to adapt energy development in light of Greater Sage-grouse protections.

viii. *Review of General Greater Sage-Grouse Conservation Policies and Plans:*

In September 2015, the BLM incorporated Greater Sage-grouse (GRSG) conservation measures into its land use plans within the range of the GRSG. In September 2016, the BLM issued a number of IMs to help guide the implementation of the GRSG plans. These GRSG plans and policies will affect where, when, and how energy and minerals are developed within the range of the GRSG.

Pursuant to Secretary's Order 3353, "Greater Sage-Grouse Conservation and Cooperation with Western States," an Interior Sage-Grouse Review Team (Review Team) is working with the State-Federal Sage-Grouse Task Force to identify opportunities for greater collaboration, to better align Federal and State plans for the GRSG, support local economies and jobs, and consider new and innovative ways to conserve GRSG in the long-term. Pursuant to the Secretary's Order, in August 2017, the Review Team will



submit a report to the Secretary summarizing their review and providing recommendations regarding next steps.

The BLM anticipates that the Review Team’s report will identify a number of potential actions to enhance the coordination and integration of state and Federal GRSG conservation efforts. The BLM also anticipates that the report will identify actions that could be taken to facilitate energy and mineral development within the range of the GRSG.

Success will be measured and evaluated in terms of improved working relationships among local, state, tribal and Federal units of government and in terms of improved partner and stakeholder understanding of effective GRSG conservation measures and of the science underlying them.

The BLM anticipates that some of the actions outlined in the Review Team’s report to the Secretary could be implemented in the near future through changes in policy (through issuance of IMs, for example), technical assistance, or training. Other actions may require amending the land use plans. Depending on the scope and significance, such amendments could take upwards of (b) (5) to complete.

*ix. Improve Land Use Planning and NEPA Act Policies and Procedures:*

The BLM’s land use planning regulations and policies are outlined in 43 CFR subparts 1601 and 1610, Resource Management Planning; BLM Manual Section 1601; and BLM Handbook 1601-1. The BLM’s policies for complying with NEPA are outlined in BLM Handbook 1790-1 and the DOI NEPA implementing regulations at 43 CFR part 46. Taken together, these regulations, manuals, and handbooks establish the policies and procedures the BLM follows when conducting land use planning and complying with NEPA, including with respect to energy and mineral development.

Pursuant to the Secretarial Memorandum of March 27, 2017, entitled “Improving the Bureau of Land Management’s Planning and National Environmental Policy Act Processes,” the BLM is identifying potential actions it could take to streamline its planning and NEPA review procedures. As part of this identification process, the BLM is working with state and local elected officials and groups, including the Western Governors’ Association and the National Association of Counties, to engage and gather input. The BLM also has invited tribes and the public to provide input on how the agency can make its planning and NEPA review procedures timelier, less costly, and more responsive to local needs. Pursuant to the Secretarial Memorandum, in September 2017, BLM will submit a report to the Secretary outlining recommended actions.

Once implemented, the actions recommended in the report should reduce the time and/or cost of complying with the BLM’s statutory direction to conduct land use planning under section 202 of FLPMA and complying with NEPA when evaluating proposed actions. These recommendations also should lead to more-standardized analyses in BLM’s NEPA reviews at the land use plan and project level.

The reduction in burden will be measured and evaluated in terms of processing times and/or costs of authorizing energy development.

Some of the actions outlined in BLM’s report to the Secretary will be actions that BLM will be able to implement in the near future, such as improvements to business processes, or updates to internal manuals or handbooks. Other actions, such as new Categorical Exclusions, would require changes in statute or regulation, may depend on other agencies to act, or may require front-end investments in data or information technology.

*x. Review Coal-Related Policies and Actions*

On March 29, 2017, Secretary Zinke issued Secretary’s Order 3348 to lift the Federal coal moratorium imposed by previous Secretary’s Order 3338. This Order conformed to the directive in E.O.13783 requiring the Secretary to lift the moratorium and commence Federal coal leasing activities consistent with all applicable laws and regulations.

The BLM is working to process coal lease applications and modifications “expeditiously” in accordance with regulations and guidance that existed before Secretary’s Order 3338. The BLM also ceased activities associated with preparation of the Federal Coal Program Programmatic Environmental Impact Statement (PEIS).

Consistent with E.O. 13783 and Secretary’s Order 3348, BLM is reviewing the following policies, with the intent to update or rescind them:

- (b) (5) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- (b) (5) [REDACTED]

work hours to appropriately respond to each coal program information request that the BLM receives.

- (b) (5)

\_\_\_\_\_

[REDACTED]

[REDACTED]

\_\_\_\_\_

xj. (b) (5) [REDACTED]

- (b) (5) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

xii. *Revise Energy-Related Collections of Information under the Paperwork Reduction Act*

The BLM anticipates revising energy-related collections of information under the Paperwork Reduction Act (e.g., Approval of Operations (1004-0213) and Application for Permit to Drill (1014-0025) to reduce administrative burden on energy development and



use through simplification of forms and associated instructions/guidance and ceasing collection of information that is unnecessary or lacks practical utility.

## **B. Bureau of Ocean Energy Management (BOEM)**

The BOEM is responsible for managing development of the Nation's offshore energy and mineral resources through offshore leasing, resource evaluation, review and administration of oil and gas exploration and development plans, renewable energy development, economic analysis, National Environmental Policy Act analysis, and environmental studies. The BOEM promotes energy security, environmental protection and economic development through responsible, science-informed management of offshore conventional and renewable energy and mineral resources. The BOEM carries out these responsibilities while ensuring the receipt of fair market value for U.S. taxpayers on Outer Continental Shelf leases, and balancing the energy demands and mineral needs of the Nation with the protection of the human, marine, and coastal environments.

Since the publication of E.O. 13771 of January 30, 2017, BOEM has been reviewing all aspects of its programs to identify regulations and guidance documents that potentially burden the development or use of domestically produced energy resources beyond the degree necessary to protect the public interest or otherwise comply with the law.

Below are specific actions BOEM is undertaking to reduce burdens on the production of energy offshore in the America First Offshore Energy Strategy, as delineated in E.O. 13795 and S.O. 3350:

### *i. Arctic Rule*

On July 15, 2016, BOEM and the Bureau of Safety and Environmental Enforcement promulgated a final rule, Oil and Gas and Sulfur Operations on the Outer Continental Shelf—Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf (81 FR 46478). Interior is reviewing the requirements for exploratory drilling conducted from mobile drilling units within the Arctic OCS (Beaufort Sea and Chukchi Sea Planning Areas). Interior may also propose elimination of other potentially burdensome requirements in that rule and information collection requirements, such as the requirement for companies to submit an Integrated Operations Plan in advance of an Exploration Plan. Review of this rule is expected to result in discrete revisions that may allow greater flexibility for operators to continue drilling into hydrocarbon zones later into the Arctic drilling season.

### *ii. Air Quality Rule*

BOEM has been re-examining the provisions of the air quality proposed rule published on April 5, 2016 (81 FR 19718), which would provide the first substantive updates to the regulation since 1980. The proposed rule addressed air quality measurement, evaluation, and control with respect to oil, gas, and sulphur operations on the OCS of the United States in the Central and Western Gulf of Mexico and the area offshore the North Slope Borough in Alaska. Interior is currently reviewing

recommendations on how to proceed, including promulgating final rules for certain necessary provisions, and issuing a new proposed rule that would withdraw certain provisions and seek additional input on others.

*iii. Financial Assurance for Decommissioning*

Notice to Lessees No. 2016-N01, for which implementation has been suspended, would make substantial changes to BOEM's requirements for companies to provide financial assurance to meet decommissioning obligations. BOEM has been undertaking a thorough review of the NTL, including gathering stakeholder input, and plans to present options to Departmental leadership this summer.

*iv. Oil and Gas Leasing on the Outer Continental Shelf*

Secretary Zinke directed development of a new five-year Outer Continental Shelf oil and gas leasing program to spur safe and responsible energy development offshore. On July 3, 2017 (82 FR 30886), BOEM published a request for information and comments on the preparation of a new five-year National OCS Leasing Program for 2019-2024. Upon its completion, the new program will replace the 2017-2022 program.

Secretary's Order 3350, "America-First Offshore Energy Strategy" (May 1, 2017) directly implements Executive Order 13795, "Implementing an America-First Offshore Energy Strategy" (Apr. 28, 2017), but also advances Interior's implementation of E.O. 13783 by providing for the reevaluation of actions that impact exploration, leasing, and development of our Outer Continental Shelf (OCS) energy resources. This Secretary's Order enhances opportunities for energy exploration, leasing, and development on the OCS by establishing regulatory certainty for OCS activities. In accordance with this Secretary's Order, Interior is reviewing potential regulatory changes to reduce burden on off-shore energy production, development, and use.

In addition, on July 13, Secretary Zinke announced that Interior would offer 75.9 million acres offshore Texas, Louisiana, Mississippi, Alabama, and Florida for oil and gas exploration and development. The region-wide lease sale scheduled for August 16, 2017 will be the first offshore sale under the National Outer Continental Shelf (OCS) Oil and Gas Leasing Program for 2017-2022. Under this program, ten region-wide lease sales are scheduled for the Gulf, where resource potential and industry interest are high, and oil and gas infrastructure is well established. Two Gulf lease sales will be held each year and include all available blocks in the combined Western, Central, and Eastern Gulf of Mexico Planning Areas.

*v. Revise Energy-Related Collections of Information under the Paperwork Reduction Act*

BOEM is reviewing four energy-related information collections, two of which are related to the Arctic Rule, and two of which collect information that is no longer needed.



### C. Bureau of Safety and Environmental Enforcement (BSEE)

The Bureau of Safety and Environmental Enforcement ensures the safe and responsible exploration, development, and production of America’s offshore energy resources through regulatory oversight and enforcement. The BSEE is focused on fostering secure and reliable energy production for America’s future. The Bureau pursues this objective through a program of efficient permitting, appropriate regulations, compliance monitoring and enforcement, technical assessments, inspections, and incident investigations. As a steward of the Nation’s OCS oil, gas, and mineral resources, the Bureau protects Federal royalty interests by ensuring that oil and gas production methods maximize recovery from underground reservoirs.

BSEE continues the efforts begun earlier this calendar year to review and seek stakeholder input on opportunities to reduce burden on the regulated community while maintaining necessary safety and environmental protections. Specifically, the Bureau is focusing its review on two final rules, published in 2016, regarding safety and environmental protection for oil and gas exploration, development and production activities on the Outer Continental Shelf (OCS). The first is the Well Control and Blowout Preventer (BOP) Rule; the second is the Arctic Exploratory Drilling Rule (the Arctic Rule), which was issued jointly by BSEE and BOEM. Both rules (as described below) revised older regulations and added some new requirements that potentially burden development of domestic offshore oil and gas production. BSEE continues to identify specific issues in both final rules that, if revised or eliminated through a future rulemaking process, could alleviate those burdens without reducing the safety or environmental protections benefits of the rules. BSEE is beginning the process of drafting timelines and developing stakeholder engagement strategies for potential revision to both sets of regulations. These rules fit into the category of “Other Actions that Potentially Burden Development or Use of Energy”. BSEE has also identified policies that should be re-examined. Those are:

- Review decommissioning infrastructure removal requirements and timelines for infrastructure;
- Clarify Civil Penalties Guidance; and
- Review current policies associated with taking enforcement actions against contractors.

BSEE has already completed publication of a final rule revising requirements of 30 CFR 250.180 to extend the period of time before a lease expires due to cessation of operations from 180 days to one year, allowing operators greater flexibility to plan exploration activities. *See Oil and Gas and Sulphur Operations in the Outer Continental Shelf – Lease Continuation Through Operations*, 82 FR 26741 (June 9, 2017). BSEE has also improved its civil penalty program through the creation of a Civil Penalty Enforcement Specialist in each district in the Gulf of Mexico Region to serve as a liaison with District and Headquarters throughout a civil penalty case, providing clarity and consistency among civil penalty cases.



BSEE is also reviewing Subpart H, the Production Safety Systems Rule, based on Department guidance received between April and May of this year. If areas for revision are identified, the Bureau would tier it behind the Well Control Rule (WCR) and the Arctic Rule in terms of potential burden reduction.

Below are the specific details of BSEE's review to identify additional regulations and policies that potentially burden development or use of energy.

*i. Revise Well Control and BOP Rule (WCR)*

The WCR was issued on April 29, 2016 and consolidated existing equipment and operational requirements for well control, including drilling, completion, workover and decommissioning operations. The rule also incorporated or updated references to numerous industry standards and established new requirements reflecting advances in areas such as well design and control, casing and cementing, real-time monitoring (RTM), and subsea containment of leaks and discharges. In addition, the final rule adopted several reforms recommended by several bodies that investigated the *Deepwater Horizon* incident.

BSEE is considering several specific revisions to its regulations. Among those considerations is a rulemaking to revise the following aspects of the new well control regulations:

- (b) (5)
- Revising the requirements for sufficient accumulator capacity and remotely-operated vehicle (ROV) capability to both open and close rams on subsea BOPs (i.e., to only require capability to close the rams).
  - Revising the requirement to shut in platforms when a lift boat approaches within 500 feet.
  - Extending the 14-day interval between pressure testing of BOP systems to 21 days in some situations.
  - Clarifying that the requirement for weekly testing of two BOP control stations means testing one station (not both stations) per week.
  - Simplifying testing pressures for verification of ram closure.
  - Revising or deleting the requirement to submit test results to BSEE District Managers within 72 hours.

(b) (5)

These changes are expected to reduce cost while maintaining important safety and environmental protections.

BSEE plans to begin the process of reviewing potential regulatory changes to this rule in July 2017. The interim step before issuing a proposed rule to revise existing regulations is to seek input on potential areas of reform from the stakeholders. BSEE is in the process of determining the most effective way to engage stakeholders to provide

meaningful and constructive input on regulatory reform efforts related to well control. As a result of stakeholder outreach, the above list of potential reforms may be adjusted or added to. (b) (5)

ii. *Revise Arctic Rule*

The Arctic Rule was published on July 15, 2016 (81 FR 46478) and revised existing regulations and added new prescriptive and performance-based requirements for exploratory drilling conducted from mobile drilling units and related operations on the Outer Continental Shelf (OCS) within the Beaufort Sea and Chukchi Sea Planning Areas (Arctic OCS). After conducting its review to eliminate burdens and increase economic opportunities, BSEE is considering the following revisions:

- (b) (5) (b) (5) require capture of water-based muds and cuttings.
- Eliminate the requirement for a cap and flow system and containment dome that are capable of being located at the well site within seven days of loss of well control.
- Eliminate the reference to the expected return of sea ice from the requirement to be able to drill a relief well within 45 days of loss of well control.
- Eliminate the reference to equivalent technology from the mudline cellar requirement.

BOEM has also identified an opportunity to reduce burden on operators. A joint rulemaking would likely be undertaken again.

Among the potential benefits of the items listed above is the possibility of allowing greater flexibility for operators to continue drilling into hydrocarbon zones later into the Arctic drilling season. Current leasing strategies in the Arctic constrain future exploratory activities to which this rule would apply.

Success will result in a reduction in burdens associated with exploration of the Nation's Arctic oil and gas reserves while providing appropriate safety and environmental protection tailored to this unique environment.

Prior to proposing a rulemaking to make the changes above, BSEE and BOEM plan to undertake stakeholder engagement activities. As a result of the stakeholder engagement, the list of potential areas for proposed reform may change or grow. This process will enhance our ability to engage the public and stakeholders, as well as ensure our ability to engage in a robust consultation with tribes and Alaska Native Claims Settlement Act corporations. Stakeholder engagement will have the added benefit of allowing BSEE and BOEM to consider tolling of the primary lease term tailored to the limited drilling windows in the Arctic.



*iii. Decommissioning Infrastructure Removal Requirements*

BSEE will re-examine the NTL 2010-G05, “Decommissioning Guidance for Wells and Platforms,” to determine whether additional flexibility should be provided to better account for facility and well numbers and size, as well as timing consideration that can arise in the case of financial distress or bankruptcy of companies. Any changes to the NTL will not have an impact on companies’ underlying decommissioning obligations, but could provide more flexibility to allow for cash-flow management and ultimately increase assurance that decommissioning obligations can be fulfilled without government expense.

*iv. Lease Continuation Through Operations*

This action was completed on June 9, 2017, when final rule 1014-AA35, “Oil and Gas and Sulphur Operations in the Outer Continental Shelf-Lease Continuation Through Operations,” was published in the Federal Register (82 FR 26741). Section 121 of the Consolidated Appropriations Act of 2017 mandated that BSEE revise the requirements of 30 CFR 250.180 relating to maintaining a lease beyond its primary term through continuous operations. The final rule changed all of the references to the period of time before which a lease expires due to cessation of operations from “180 days” and “180<sup>th</sup> day” to a “year” and from “180-day period” to a “1-year period.” The rule has become effective and is allowing operators greater flexibility to plan exploration activities.

*v. Contractor Incidents of Noncompliance*

BSEE currently has a policy that calls for issuing notices of noncompliance (INCs) to contractors as well as operators in certain instances. BSEE will examine whether this policy is achieving the desired deterrence value or whether an alternative compliance incentive should be considered and the policy revised. There are currently several ongoing court actions that could result in adjustments to this policy. BSEE will consider all of this information while examining the policy.

*vi. Civil Penalties*

Since 2013, the BSEE civil penalty program has continued to improve its processes and programs. For example in 2016, each of the Districts in the Gulf of Mexico Region (GOMR) created the position of Civil Penalty Enforcement Specialist to assist with the review of all INCs to determine which INCs are appropriate for civil penalty assessment, and to act as a liaison with the District and Headquarters (HQ) throughout a civil penalty case. This effort has greatly assisted in providing clarity and consistency to the development of civil penalty cases.

*vii. Energy-Related Information Collections under the Paperwork Reduction Act*

BSEE has approximately 25 information collections associated with our regulations and guidance that must be renewed every three years on a rolling basis. The renewal process

involves an analysis of whether each information collection continues to be necessary and if whether it requires modification. Through this process, BSEE continuously reviews our forms and the information we collect and reduces the collection burden wherever appropriate. Additionally, there may be further burden reduction associated with potential revisions to the Well Control and Arctic rules once final determinations have been made with respect to specific action on those regulations.

#### **D. Office of Natural Resources Revenue (ONRR)**

The Office of Natural Resources Revenue is responsible for ensuring revenue from Federal and Indian mineral leases is effectively, efficiently, and accurately collected, accounted for, analyzed, audited, and disbursed to recipients. ONRR collects an average of over \$10 billion dollars annual revenue from onshore and offshore energy production, one of the Federal government's largest sources of non-tax revenue.

##### *i. Royalty Policy Committee*

In an effort to ensure the public continues to receive the full value of natural resources produced on federal lands, Secretary Zinke signed a charter establishing a Royalty Policy Committee (RPC) to provide regular advice to the Secretary on the fair market value of and collection of revenues from Federal and Indian mineral and energy leases, include renewable energy sources. The Committee may also advise on the potential impacts of proposed policies and regulations related to revenue collection from such development, including whether a need exists for regulatory reform. The group will consist of up to 28 local, Tribal, state, and other stakeholders and will serve in an advisory nature. The Secretary's Counselor to the Secretary for Energy Policy chairs the RPC.

##### *ii. 2017 Valuation Rule*

. On April 4, 2017, ONRR published a proposed rule that would rescind the 2017 Valuation Rule. The ONRR, after considering public feedback, recognized that implementing the rule would be contrary to the rule's stated purpose of offering greater simplicity, certainty, clarity, and consistency in product valuation. ONRR has determined that the 2017 Valuation Rule unnecessarily burdened the development of Federal and Indian coal beyond what was necessary to protect the public interest or otherwise comply with the law. It is therefore repealing the regulation in its entirety. The rule is expected to be published in August 2017.

#### **E. Office of Surface Mining Reclamation and Enforcement (OSMRE)**

The Office of Surface Mining Reclamation and Enforcement ensures, through a nationwide regulatory program, coal mining is conducted in a manner that protects communities and the environment during mining, restores the land to beneficial use following mining, and mitigates the effects of past mining by aggressively pursuing reclamation of abandoned mine lands. The OSMRE's statutory role is to promote and assist its partner States and Tribes in establishing a stable regulatory environment for coal mining. The proposed level of regulatory grant funding provides for the efficient and effective operations of programs at a



level consistent with the anticipated obligations of State and tribal regulatory programs to account for the Nation’s demand for coal mine permitting and production.

On February 16, 2017, President Trump signed a resolution under the Congressional Review Act to annul the Stream Protection rule. This rule imposed substantial burdens on the coal industry and threatened jobs in communities dependent on coal. As described below, OSMRE has drafted a Federal Register document to conform the Code of Federal Regulations to the legislation and return the regulations to their previous status and anticipates publication on or about September 30, 2017. In the interim, OSMRE has ensured that the stream protection rule is not being implemented in any way and that regulation is occurring under the pre-existing regulatory system.

OSMRE is reviewing additional actions to reduce burdens on coal development, including, for example, reviewing the state program amendment process to reduce the time it takes to formally amend an approved SMCRA regulatory program.

In compiling the following list of actions for review, OSMRE considered direct and indirect impacts to the coal industry, as well as impacts to the states with primary responsibility for regulating coal mining activities, pursuant to the Surface Mining Control and Reclamation Act.

#### **Recommendations for Alleviating or Eliminating Burdensome Actions**

##### *i. Disapproval of the Stream Protection Rule*

The Stream Protection Rule (SPR) was published on December 20, 2016, and became effective on January 19, 2017. In accordance with the Congressional Review Act, Congress passed, and the President signed, a resolution of disapproval of the SPR on February 16, 2017, as Public Law 115-5. No provisions of the SPR have been enforced since passage of the resolution. In addition, OSMRE will formally document the CRA nullification of the SPR by publishing in the Federal Register a document that replaces the SPR text with the regulations that were in place prior to January 19, 2017. This will result in the removal of any amendments, deletions or other modifications associated with the nullified rule, and the reversion to the text of all regulations in effect immediately prior to the effective date of the SPR.

OSMRE estimates the elimination of this rule will save industry approximately \$82 million, and will reduce the amount of time states and OSMRE are expending in the processing of permit applications and monitoring performance during the life of the operation.

Interior has identified the CRA nullification and subsequent action by OSMRE to conform the CFR to the Congressional action as a deregulatory action under EO 13771.

##### *ii. Work with Interstate Mining Compact Commission (IMCC) to Revisit and Revise Ten-Day Notices and Independent Inspections – Directives INE-24, INE-35, & REG-*

Under revisions to OSMRE Directive REG-8, which establishes policies, procedures and responsibilities for conducting oversight of state and tribal regulatory programs, OSMRE conducts 10% of all routine oversight inspections with 24 hours' notice to the state regulatory authority. If the state inspector is unavailable to accompany the OSMRE inspector, OSMRE will conduct the inspection alone. These and other oversight inspections sometimes result in the issuance of Ten-Day Notices (TDNs) to the state regulatory authority under Inspection and Enforcement (INE)-35. In addition, INE-24, issued on May 26, 1987, requires OSMRE to issue a TDN to state regulatory authorities upon receipt of a citizen's complaint.

Between 2011 and 2016, 882 TDNs were issued to state regulatory programs. On an annual basis, 39 to 74% of those resulted from citizen's complaints. In addition, an evaluation of data during 2013 found that the number of TDNs issued when the state inspector does not participate was determined to be 6.4% of the total oversight inspections, versus 1.5% when the state inspector accompanied the OSMRE inspector. State regulatory authorities, particularly in the Appalachian Region, have expressed concern that the number of hours required to prepare TDN responses can be significant.

In an effort to address these concerns, a joint OSMRE and State/Tribal Work Group assessed various topics, including the use of TDNs and independent inspections. In a report issued on July 30, 2014, the Work Group made six specific recommendations for the TDN process and four recommendations regarding the independent inspection process. Interstate Mining Compact Commission (IMCC) member states have requested OSMRE revisit these recommendations, and others, in an effort to implement the recommendations. In addition, OSMRE will revisit and revise, as needed, the specific policy directives governing the use of TDNs and independent inspections in cooperation with the IMCC to reduce the amount of time states and OSMRE are expending to process TDNs.

The review will commence this calendar year, following specific timelines and benchmarks to be established jointly with IMCC.

*iii. Work with IMCC to Revise or Rescind OSMRE Memorandum and Directive INE-35 – TDNs and Permit Defects*

On November 15, 2010, the OSMRE Director issued a memorandum directing OSMRE staff to apply the TDN process and Federal enforcement to permitting issues under approved regulatory programs. In support of this memorandum, on January 31, 2011, the Director reissued Directive INE-35, regarding policy and procedures for the issuance of TDNs. This directive requires the issuance of a TDN whenever a permit issued by the state regulatory authority (RA) contains a "permit defect," which the directive defines as meaning "a type of violation consisting of any procedural or substantive deficiency in a permit-related action taken by the RA (including permit issuance, permit revision, permit renewal, or transfer, assignment, or sale of permit rights)." The directive further states that OSMRE will not review pending permitting decisions and will not issue a TDN for an alleged violation involving a possible permit defect where the RA has not taken the relevant permitting action (e.g., permit issuance, permit revision, permit renewal, or transfer, assignment, or sale of permit rights).



Since the issuance of this policy and associated directive, concerns have been raised by some states and industry stakeholders regarding the potential impact on mining operations where the RA has issued a permit, revision, or renewal, and the operator has commenced activities based upon RA approval. OSMRE in cooperation with the IMCC will revisit the policy and directive and revise or rescind, as appropriate to provide more certainty to the industry in the State RA permitting process.

The review will commence this calendar year; specific timelines and benchmarks will be established jointly with IMCC.

*iv. Revise Processing State Program Amendments – Directive STP-1*

Directive STP-1, issued in October 2008, establishes policy and procedures for review and processing of amendments to state regulatory programs. Most changes in state law or regulations that impact an approved SMCRA regulatory program require submission of a formal program amendment to OSMRE for approval. Such changes to primacy programs cannot be implemented until a final amendment is approved by OSMRE. In addition, written concurrence must be received from the Administrator of the Environmental Protection Agency with respect to those aspects of a state/tribal program amendment which relates to air or water quality standards promulgated under the authority of the Clean Air Act or the Clean Water Act prior to OSMRE approval. In accordance with 30 CFR 732.17(h)(13), OSMRE must complete a final action on program amendments within seven months of receipt. Often, due to the complexities of the process and other issues, including influences outside of OSMRE, it is difficult for OSMRE to meet the required processing times.

The result is that state regulatory authorities are occasionally unable to move forward in a timely manner with needed program amendments.

Based upon the results of an internal control review (ICR) and work with the state/tribal work group, OSMRE is developing new training guides and opportunities for states and revising Directive STP-1 to improve the state program amendment process. OSMRE will also review the process with the Solicitor's office to evaluate opportunities for process improvement. In addition, the recent approval by OMB of the information collection requirements of 30 CFR Part 732 was conditioned upon OSMRE developing new guidance and supporting documents for states to use when preparing amendments to approved programs. OSMRE intends for these actions to reduce its processing time for state program amendments.

The revision of Directive STP-1 and development of training guides is anticipated to be completed this calendar year. OSMRE will track processing times once the revised directive and training have been implemented, and compare results to previous years. OMB approval of new guidance for Part 732 is required by July 31, 2020.

*v. Revise or Rescind OSMRE Policy Advisory and Proposed Rulemaking: Self-Bonding*

On August 5, 2016, the Director of OSMRE issued a policy advisory on self-bonding. The advisory was in direct response to three of the largest coal mine operators in the nation filing for Chapter 11 protection under the U.S. Bankruptcy Code between 2015

and 2016. Those companies held approximately \$2.5 billion of unsecured or non-collateralized self-bonds that various states with Federally approved SMCRA regulatory programs previously accepted to guarantee reclamation of land disturbed by coal mining. The advisory stated that “the bankruptcy filings confirm the existence of significant issues about the future financial abilities of coal companies and how they will meet future reclamation obligations.” While recognizing the action of certain state programs to address self-bonding issues, the advisory went on to say that “each regulatory authority should exercise its discretion and not accept new or additional self-bonds for any permit until coal production and consumption market conditions reach equilibrium, events which are not likely to occur until at least 2021.” Since the issuance of this advisory, all three companies of concern have completed their plans for Chapter 11 reorganization, and either have or are expected to replace all self-bonds with other forms of financial guarantees.

In addition to the issuance of the policy advisory on self-bonding, OSMRE accepted a petition for rulemaking submitted March 3, 2016, by WildEarth Guardians. The petition requested that OSMRE revise its self-bonding regulations to ensure that companies with a history of insolvency, and their subsidiary companies, not be allowed to self-bond coal mining operations.

Limiting the use of self-bonds, as indicated in the policy advisory or potentially through a rulemaking, could impact a company’s ability to continue mining. In addition, there will likely be an increased demand and potential negative impact on the availability of third party surety bonding.

The GAO announced on January 17, 2017, that it will conduct an audit of financial assurances for reclaiming coal mines (job code 101326) that will focus on the role of OSMRE in implementing and overseeing the Surface Mining Control and Reclamation Act’s requirements related to financial assurances.

In view of the current status of the self-bonding bankruptcies and recent executive orders concerning rulemakings, OSMRE will reconsider the scope of the policy advisory and revise or rescind, as appropriate. In addition, OSMRE will revisit the need for and scope of any potential rulemaking in response to the previously accepted petition. Furthermore, OSMRE will carefully consider the report and recommendations of the pending GAO audit of financial assurances currently underway. OSMRE will solicit public input prior to finalizing any decision on the need for further rulemaking.

OSMRE will continue to monitor the status of self-bonding issues in state programs in cooperation with the IMCC and other stakeholders (sureties, industry, and environmental groups).

vi. *Revise or Rescind OSMRE Enforcement Memorandum – Relationship between CWA and SMCRA*

On July 27, 2016, the OSMRE Director issued a policy memo to staff providing direction on the enforcement of the existing regulations related to violations of the Clean Water Act caused by SMCRA-permitted operations and related issues, such as responses to self-



reported violations of National Pollutant Discharge Elimination System (NPDES) limits and OSMRE responses to Notices of Intent (NOI) to sue alleging CWA violations at SMCRA-permitted operations. The policy memo specifically required an NOI to be processed as a citizen complaint, which requires OSMRE to issue a TDN to the state RA upon receipt of the NOI. In addition, the memo stated that a violation of water quality standards is also a violation of SMCRA regulations.

State regulatory authorities, as well as industry, have raised issues with this guidance document expressing concern with overlap and potential conflicts between Section 702(a)(3)<sup>1</sup> of SMCRA and the CWA. In addition, state RAs have raised concerns about new TDNs and related enforcement actions that have been issued in response to this policy guidance. The relationship between the CWA and SMCRA and the role of the state RAs in ensuring compliance in accordance with their approved SMCRA regulatory programs have been longstanding issues. Resolution will bring certainty to the state regulatory programs as well as for the industry.

OSMRE will revisit the policy issues and concerns in cooperation with the IMCC and will revise or rescind the memorandum, as appropriate. Review of the policy with IMCC member states will commence this calendar year; the revised or rescinded policy should be complete by the end of this calendar year. OSMRE will consider seeking public input prior to finalizing the policy (b) (5)

*vii. Revise Policy on Reclamation Fee for Coal Mine Waste (Uram Memo) and Propose Rule for Additional Incentives*

On July 22, 1994, then-Director Robert Uram issued a memorandum outlining the conditions under which OSMRE would waive the assessment of reclamation fees on the removal of refuse or coal waste material for use as a waste fuel in a cogeneration facility. Recently, the Pennsylvania regulatory authority (PADEP) requested that OSMRE update this policy as outlined below to incentivize reclamation efforts on sites with coal refuse reprocessing activities.

The PADEP believes that the reclamation fees deter operators from reclamation efforts on sites with coal refuse reprocessing activities. Coal refuse sites located within the Anthracite Coal Region are unable or have ceased the removal of coal refuse to be used as waste fuel at co-generation facilities. This is partly or totally due to the assessment of reclamation fees on coal refuse used as waste fuel. In addition, PADEP recommended that OSMRE consider waste derived from filter presses at existing coal preparation plants to be a “no value<sup>2</sup>” product, which would encourage its use as a waste fuel rather than requiring it to be disposed in a coal refuse pile.

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<sup>1</sup> Nothing in this Act shall be construed as superseding, amending, modifying, or repealing the Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a), the National Environmental Policy Act of 1969 (42 U.S.C. 4321-47), or any of the following Acts or with any rule or regulation promulgated thereunder, including, but not limited to --  
(3) The Federal Water Pollution Control Act (79 Stat. 903), as amended (33 U.S.C. 1151-1175), the State laws enacted pursuant thereto, or other Federal laws relating to preservation of water quality.

<sup>2</sup> No value determinations are based upon the criteria established in the 1994 Uram Memorandum.

OSMRE will revisit the 1994 Uram Memo, with the goal of providing an incentive for use of coal refuse as a coal waste fuel. In addition, OSMRE will revisit the remaining incentives provided by the 2006 amendments to SMCRA at section 415, some of which apply specifically to removal or reprocessing of abandoned coal mine waste. Additional incentives pursuant to Section 415 will require promulgation of rules, and, therefore, input from the public will be solicited.

Providing additional incentives to industry to promote remining of coal refuse and other abandoned mine sites will provide for additional reclamation of abandoned mines that would not otherwise be accomplished through the Abandoned Mine Lands (AML) program. Specific benchmarks for measuring success, such as acres of additional reclamation performed, will be developed consistent with the implementation of the incentives.

*viii. Energy-Related Information Collections under the Paperwork Reduction Act*

OSMRE reviewed the current industry costs associated with the Paperwork Reduction Act and did not find any information collections that “potentially burden<sup>3</sup> the development or utilization of domestically produced energy resources” in accordance E.O. 13783. It should be noted that there will be no industry costs associated with information collection based on the Stream Protection Rule, due to the Congressional Review Act nullification of that final rule.

(b) (5)

**G. U.S. Fish and Wildlife Service (FWS)**

The U.S. Fish and Wildlife Service (FWS) is reviewing its final rule, “Management of Non-Federal Oil and Gas Rights,” 81 Fed. Reg. 79948 (Nov. 14, 2016) to determine whether revision would be appropriate to reduce burden on energy.

**H. Bureau of Reclamation (BOR)**

The Bureau of Reclamation is the second largest producer of hydroelectric power in the United States, operating 53 hydroelectric power facilities, comprising 14,730 megawatts of capacity. Each year, Reclamation generates over 40 million megawatt-hours of electricity (the equivalent demand of approximately 3.5 million US homes),<sup>4</sup> producing over one billion dollars in Federal revenue. In addition to our authorities to develop, operate, and maintain Federal hydropower facilities, Reclamation is also authorized to

<sup>3</sup> Burden “means to unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the siting, permitting, production, utilization, transmission, or delivery of energy resources” (Presidential Executive Order 13783, Promoting Energy Independence and Economic Growth, March 28, 2017).

<sup>4</sup> See: <https://www.eia.gov/tools/faqs/faq.php?id=97&t=3>



permit the use of our non-powered assets to non-Federal entities for the purposes of hydropower development via a lease of power privilege (LOPP).

Reclamation is committed to facilitating the development of non-Federal hydropower at our existing Federal assets. Acting on this commitment, Reclamation has undertaken a number of activities, including:

- i. Completion of two publically available resource assessments.*  
Assessments identify technical hydropower potential at existing Reclamation facilities, irrespective of financial viability.
- ii. Collaboration with stakeholder groups to improve the LOPP process and LOPP Directive and Standard (D&S) policy guidance document.*

A Bureau of Reclamation LOPP is a contractual right given to a non-Federal entity to use a Reclamation asset (e.g. dam or conduit) for electric power generation consistent with Reclamation project purposes.

Reclamation has conducted LOPP outreach with stakeholder groups and hydropower industry associations; and made resources and staff available via a LOPP website: <https://www.usbr.gov/power/LOPP/index.html>. Reclamation has also partnered with sister agencies (United States Army Corps of Engineers and the Department of Energy) under the Memorandum of Understanding (MOU) for Hydropower to, in part, encourage and streamline non-Federal development on Federal infrastructure.

Through these activities, Reclamation has made resources available to developers and peeled back the barriers that may burden non-Federal hydropower development - while continuing to protect the Federal assets that our customers, operating partners, and stakeholders have depended on for over a century. The response Reclamation has received from these groups (including the development community) in this effort has been overwhelmingly positive. LOPP projects provide a source of reliable, domestic, and sustainable generation – that supports rural economies and the underlying Federal water resource project.

## **I. Indian Affairs (BIA)**

The Bureau of Indian Affairs (BIA) provides services to nearly two million American Indians and Alaska Natives in 567 federally recognized Tribes in the 48 contiguous States and Alaska. The BIA's natural resource programs assist Tribes in the management, development, and protection of Indian trust land and natural resources on 56 million surface acres and 59 million subsurface mineral estates. These programs enable tribal trust landowners to optimize sustainable stewardship and use of resources, providing benefits such as revenue, jobs and the protection of cultural, spiritual and traditional resources. Income from energy production is the largest source of revenue generated from trust lands, with royalty income of \$534 million in 2016.

## Indian Energy Actions

### i. Clarify “Inherently Federal Functions for Tribal Energy Resource Agreements (TERAs)”

Tribal Energy Resource Agreements (TERAs) are authorized under Title V of the Energy Policy Act of 2005 (Act). A TERA is a means by which a Tribe could be authorized to review, approve, and manage business agreements, leases, and rights-of-way pertaining to energy development on Indian trust lands, absent approval of each individual transaction by the Secretary of the Interior. Interior promulgated TERA regulations in 2008 at 25 CFR part 224. TERAs offer the opportunity to promote development of domestically produced energy resources on Indian land; however, twelve years after the passage of the Act and nine years after the issuance of TERA regulations, not one tribe has sought Interior’s approval for a TERA. One theory asserted by at least one Tribe as to the failure of this legislation is the Act does not address precisely how much federal oversight would disappear for tribes operating under TERAs. Specifically, Interior had not defined the term “inherently federal functions” that Interior will retain following approval of a TERA. This term appears in Interior’s regulations at 25 CFR §§ 224.52(c) and 224.53(e)(2), but not in the Act. Without some assurance as to the benefits (in terms of less federal oversight) a Tribe would receive through clarification of “inherently federal functions,” Tribes have no incentive to undergo the intensive process of applying for a TERA. Clarification of this phrase would also address Recommendation 5 of GAO-15-502, *Indian Energy Development: Poor Management by BIA Has Hindered Energy Development on Indian Lands* (June 2015). The recommendation directed Interior to “provide additional energy development-specific guidance on provisions of TERA regulations that tribes have identified to Interior as unclear.”

Indian Affairs has been working closely with the Office of the Solicitor to develop guidance on how Interior will interpret the term “inherently federal functions.” It is expected that by providing this certainty as to the scope of federal oversight, Tribes will better be able to justify the process of applying for a TERA. Indian Affairs expects to have the guidance finalized and available on its website by October 2017.

Indian Affairs anticipates that the benefits of this action will be to promote the use of TERAs, which will both save Tribes the time and resources necessary to seek and obtain Interior approval of each transaction related to energy development on Indian land, and will help ease Interior’s workload by eliminating the need for Departmental review of each individual transaction.

The reduction in burden will be measured by the number of Tribes that choose to obtain TERAs. Once each Tribe obtains a TERA, Interior will work with the Tribe to estimate savings in terms of time and resources.

(b) (5)



(b) (5)

[REDACTED]

[REDACTED]

#### J. Integrated Activity Plan for Oil & Gas in the National Petroleum Reserve – Alaska

Noting that the National Petroleum Reserve – Alaska (NPRA) is the largest block of federally managed land in the United States and offers economically recoverable oil and natural gas, the Secretary issued an order focusing on management of this area in a manner that appropriately balances promoting development and protecting surface resources. *See* Secretary’s Order Secretary’s Order 3352, “National Petroleum Reserve – Alaska” (May 31, 2017). The Secretary’s Order requires review and revision of the Integrated Activity Plan for management of the area and, within the existing plan, maximizing the tracts offered during the next lease sale.

#### K. Mitigation

Implemented properly, mitigation can be a beneficial tool for advancing the Administration’s goals of American energy independence and security, while ensuring public resources are managed for the benefit and enjoyment of the public.

Interior seeks to establish consistent, effective and transparent mitigation Principle Standards across all its Agencies. Through this guidance, Interior and its Agencies will use consistent terminology, reduce redundancies and simplify frameworks so that the federal mitigation programs and stepped down programs, such as compensatory mitigation, are predictable and consistent.

(b) (5)

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(b) (5)

**BLM**

- i. Review and Revise Mitigation Manual Section (MS-1794) and Handbook (H-1794-1) Related to Mitigation, Which Provide Direction on the Use of Mitigation, Including Compensatory Mitigation, To Support the BLM's Multiple-Use and Sustained-Yield Mandates.*

The Mitigation Manual Section and Handbook provide direction on the use of mitigation, including compensatory mitigation, to support the BLM's multiple use and sustained yield mandates. (b) (5)

(b) (5)

Revisions to the Manual and Handbook that address the issues identified above are expected to provide greater predictability (internally and externally), ease conflicts, and may reduce permitting/authorizations times.

Measuring success would be largely quantitative. The BLM would continue to track impacts from land use authorizations and would also track the type and amount of compensatory mitigation implemented and its effectiveness, preferably in a centralized database.

The BLM is drafting an IM that provides interim direction regarding new and ongoing mitigation practices while the Manual and Handbook are being reviewed and revised. Use of the existing Manual and Handbook would continue, as modified and limited by this IM, until they are superseded.

*ii. Review of Manual 6220 – National Monuments, National Conservation Areas, and Similar Designations (07/13/2012) To Assure That It Conforms to BLM's Revised Mitigation Guidance.*

Manual 6220 provides guidance for managing BLM National Conservation Lands designated by Congress or the President as National Monuments, National Conservation Areas, and similar designations (NM/NCA) in order to comply with the designating Acts of Congress and Presidential Proclamations, the Federal Land Policy and Management Act of 1976 (FLPMA), and the Omnibus Public Land Management Act of 2009 (16 U.S.C. 7202). Manual 6220 requires that when processing a new ROW application, the BLM will determine, to the greatest extent possible, through the NEPA process, the consistency of the ROW with the Monument or NCA's objects and values; consider routing or siting the ROW outside of the Monument or NCA; and consider mitigation of the impacts from the ROW. Land use plans must identify management actions, allowable uses, restrictions, management actions regarding any valid existing rights, and mitigation measures to ensure that the objects and values are protected. The manual requires that a land use plan for a Monument or NCA should consider closing the area to mineral leasing, mineral material sales, and vegetative sales, subject to valid existing rights, where that component's designating authority does not already do so.

A review of Manual 6220 to identify where clarity could be provided for mitigation, notification standards, and compatible uses, may potentially reduce or eliminate burdens. The BLM will review Manual 6220 following the proposed revisions to the BLM Mitigation Manual Section (MS-1794) and Handbook (H-1794-1) to ensure that Manual 6220 conforms to the BLM's revised mitigation guidance.

Addressing any potential issues, along with providing consistency with the BLM Mitigation Manual is expected to provide greater predictability (internally and externally), reduce conflicts, and may reduce permitting/authorizations times.



Success will be measured in the BLM meeting legal obligations under the designating Act or Proclamation for each unit and the allowance of compatible multiple uses, consistent with applicable provisions in the designating Act or Proclamation.

*iii. Other Reviews of BLM Manual Provisions*

Secretary's Order 3349 also revoked a prior order regarding mitigation and directed bureaus to examine all existing policies and other documents related to mitigation and climate change. *See* Secretary's Order 3330 "Improving Mitigation Policies and Practices of the Department of the Interior." Actions Interior is taking to implement this direction include:

- **BLM Manual 6400 – Wild and Scenic Rivers, Policy and Program Direction for Identification, Evaluation, Planning, and Management (07/13/2012)**

Manual 6400 provides guidance for managing eligible and suitable wild and scenic rivers and designated wild and scenic rivers in order to fulfill requirements found in the Wild and Scenic Rivers Act (WSRA). Subject to valid existing rights, the manual states that minerals in any Federal lands that constitute the bed or bank or are situated within ¼ mile of the bank of any river listed under Section 5(a) are withdrawn from all forms of appropriation under the mining laws, for the time periods specified in Section 7(b) of the WSRA. The manual allows new leases, licenses, and permits under mineral leasing laws be made, but requires that consideration be given to applying conditions necessary to protect the values of the river corridor. For wild river segments, the manual requires that new contracts for the disposal of saleable mineral material, or the extension or renewal of existing contracts, should be avoided to the greatest extent possible to protect river values.

Manual 6400 will be reviewed following the proposed revisions to the BLM Mitigation Manual Section and Handbook to ensure that it conforms to the BLM revised mitigation guidance. Although the requirements for minerals and mineral withdrawals are legally mandated under the mining and mineral leasing laws in Sections 9(a) and 15(2) of the WSRA, Manual 6400 will be reviewed for opportunities to clarify discretionary decision-space.

Ensuring consistency with the BLM Mitigation Manual will foster greater predictability (internally and externally), reduce conflicts, and may reduce permitting/authorizations times.

Success will be measured in terms of complying with the WSRA and identifying and allowing compatible multiple uses.



- **BLM Manual 6280 – Management of National Scenic and Historic Trails and Trails under Study or Recommended as Suitable for Congressional Designation (09/14/2012)**

Manual 6280 provides guidance for managing trails under study, trails recommended as suitable, and congressionally designated National Scenic and Historic Trails to fulfill the requirements of the National Trails System Act (NTSA) and the Federal Land Policy and Management Act. Manual 6280 identifies mitigation as one way to address substantial interference with the natural and purposes for which a National Trail is designated.

Manual 6280 will be reviewed following the proposed revisions to the BLM Mitigation Manual Section and Handbook to ensure it conforms to the BLM revised mitigation guidance. Although many of the requirements are legally mandated under the National Trails System Act, Manual 6280 will be reviewed for opportunities to clarify any discretionary decision-space to reduce or eliminate burdens.

Addressing any potential issues, along with providing consistency with the BLM Mitigation Manual is expected to provide greater predictability (internally and externally), reduce conflicts, and may reduce permitting/authorizations time

Success will be measured in terms of complying with the NTSA and identifying and allowing compatible multiple uses.

## **FWS**

### *i. Compensatory Mitigation for Impacts to Migratory Bird Habitat*

FWS has the authority to recommend, but not require, mitigation for impacts to migratory bird habitat under several Federal authorities. Pursuant to a Memoranda of Understanding with the Federal Energy Regulatory Commission (FERC), implementing the January 10, 2001, Executive Order (E.O.) 13186, FWS evaluates the impacts of FERC-licensed interstate pipelines to migratory bird habitat.

(b) (5)  
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FWS is developing Service-wide guidance to ensure the agency is consistent, fair and objective, appropriately characterizes the voluntary nature of compensatory mitigation for impacts to migratory bird habitat, and demonstrates a reasonable nexus between anticipated impacts and recommended mitigation. FWS anticipates it will take three months to finalize the guidance.

(b) (5)

Guidance will result in timely and practicable licensing decisions, while providing for the conservation of migratory Birds of Conservation Concern.

Success will be measured by timely issuance of licenses that contain appropriate recommendations that do not impose burdensome costs to developers.

FWS Regional and Field Offices will provide informal guidance through email and regularly scheduled conference calls to educate and remind staff of policy.

*ii. Mitigation Actions - Regulations and Policy Governing Candidate Conservation Agreements with Assurances (CCAAs)*

CCAAs are developed to encourage voluntary conservation efforts to benefit species that are candidates for listing by providing the regulatory assurance that take associated with implementing an approved candidate conservation agreement will be permitted under section 10(a)(1)(A) for the ESA if the species is ultimately listed, and that no additional mitigation requirements will be imposed.

Recent revisions to the CCAA regulations and policy and the adoption of “net conservation benefit” as an issuance standard has been perceived by some to impose an unnecessary, ambiguous, and burdensome standard that will discourage voluntary conservation. There are also concerns with the preamble language that suggested that CCAAs may not be appropriate vehicles for permitting take of listed species resulting from oil and gas development activities.

FWS will solicit public review and comment on the need and basis for a revision of the CCAA regulation and associated policy for the purpose of evaluating whether we should maintain or revise the current regulation and policy or reinstate the former ones. FWS anticipates that it will take three months to prepare the Federal Register Notice soliciting public review and comments. FWS will then publish the Federal Register Notice with a 60-day comment period. Based upon comments received, FWS will decide whether and how to revise the regulation and policy.

The anticipated benefits will be ensuring the CCAA standard is clear and encourages stakeholder participation in voluntary conservation of candidate and other at-risk species.

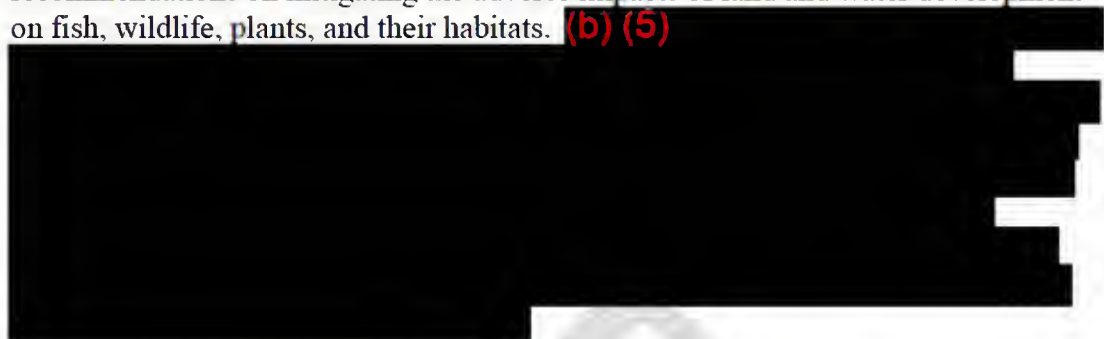
Success will be measured by FWS providing timely assistance to developers if they seek a CCAA.

FWS Headquarters will provide Regional and Field Offices with informal guidance through email and regularly scheduled conference calls to remind staff of the regulation and policy review.



*iii. Mitigation Actions - FWS Mitigation Policy*

In 2016, FWS finalized revisions to its 1981 Mitigation Policy, which guides FWS recommendations on mitigating the adverse impacts of land and water development on fish, wildlife, plants, and their habitats. (b) (5)



Industry believes the revised policy's mitigation planning goal exceeds statutory authority.

FWS will solicit public review and comment for the purpose of evaluating whether we should remove reference to net conservation benefit as a mitigation objective in appropriate circumstances and other references to the Presidential Memorandum on Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment, the Secretary of the Interior's Order 3330 entitled "Improving Mitigation Policies and Practices of the Department of the Interior" (October 31, 2013), and the Departmental Manual Chapter (600 DM 6) on Implementing Mitigation at the Landscape-scale (October 23, 2015). FWS anticipates that it will take three months to prepare the Federal Register Notice soliciting public review and comment on the policy. FWS will then publish the Federal Register Notice with a 60-day comment period. Based upon comments received, FWS will decide whether and how to revise the policy.

The anticipated benefits will be timely and practicable mitigation recommendations by FWS staff to energy developers (and others) that promote conservation of species and their habitats.

Success will be measured by incorporation of recommendations without delays to the permitting or licensing process.

FWS Headquarters will provide FWS Regional and Field Offices informal guidance through email and regularly scheduled conference calls to remind staff of the policy review.

*iv. FWS ESA Compensatory Mitigation Policy*

In 2016, FWS finalized its Endangered Species Act (ESA) Compensatory Mitigation Policy (CMP), which steps down and implements the 2016 revised FWS Mitigation Policy (including the mitigation planning goal). The CMP was established to improve consistency and effectiveness in the use of compensatory mitigation as

recommended or required under the ESA. Its primary intent is to provide FWS staff with direction and guidance in the planning and implementation of compensatory mitigation under the ESA.

Industry believes the mitigation planning goal exceeds statutory authority.

FWS will solicit public review and comment for the purpose of evaluating whether we should remove reference to net conservation benefit as a mitigation objective in appropriate circumstances and other references to the Presidential Memorandum on Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment, the Secretary of the Interior's Order 3330 entitled "Improving Mitigation Policies and Practices of the Department of the Interior," and the Departmental Manual Chapter on Implementing Mitigation at the Landscape-scale. FWS anticipates that it will take three months to prepare the Federal Register Notice soliciting public review and comment on the policy. FWS will then publish the Federal Register Notice with a 60-day comment period. Based upon comments received, FWS will decide whether and how to revise the policy.

The anticipated benefits will be timely and practicable mitigation recommendations by FWS staff to energy developers (and others) that promote conservation of species and their habitats.

Success will be measured by incorporation of recommendations without delays to the permitting or licensing process.

FWS Headquarters will provide FWS Regional and Field Offices informal guidance through email and regularly scheduled conference calls to remind staff of the policy review.

*v. Interim Guidance on Implementing the Final ESA Compensatory Mitigation Policy*

This document provides interim guidance for implementing the Service's CMP. The guidance provides operational detail on the establishment, use, and operation of compensatory mitigation projects and programs as tools for offsetting adverse impacts to endangered and threatened species, species proposed as endangered or threatened, and designated and proposed critical habitat under the ESA.

Industry believes the guidance relies upon a mitigation planning goal that exceeds statutory authority.

Within 6 months of completing revisions to the Endangered Species Act Compensatory Mitigation Policy (CMP) (or deciding revisions to the CMP are not necessary), FWS will revise the interim implementation guidance (to be consistent with the revised CMP) and make it available for public review and comment in the Federal Register for 60 days. Within 6 months of close of the comment period, FWS will publish the final implementation guidance in the Federal Register (Note: we



anticipate that the implementation guidance may need to be reviewed under the Paperwork Reduction Act, which may affect the timeline).

The anticipated benefits will be timely and practicable mitigation recommendations by FWS staff to energy developers (and others) that promote conservation of species and their habitats.

Success will be measured by incorporation of recommendations without delays to the permitting or licensing process.

FWS Headquarters will issue a memorandum to Regional and Field staff reiterating the limited applicability of the CMP's mitigation planning goal and that decisions related to compensatory mitigation must comply with the ESA and its implementing regulations.

## **L. Climate Change**

Interior is reviewing Agency reports of the work conducted to identify requirements relevant to climate that can potentially burden the development or uses of domestically produced energy resources. Most of the Agencies found no existing requirements in place and reaffirmed they were not developing such processes. A couple of Agencies have non-regulatory documents (i.e., handbook, memo, manual, guidance, etc.) that inwardly focus on their units and workforce management activities. Interior is reviewing these to better understand their connection to other management, operations and guidance documents.

## **BLM**

BLM will rescind its Permanent Instruction Memorandum (PIM) 2017-003 (Jan. 12, 2017), which transmits the Council on Environmental Quality guidance on consideration of greenhouse gas emissions and the effects of climate change in National Environmental Policy Act reviews.

- i. Permanent Instruction Memorandum (Permanent IM) 2017-003 (Jan. 12, 2017) -- The CEQ Guidance on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews:*

This Permanent IM transmits the CEQ guidance on consideration of greenhouse gas (GHG) emissions and the effects of climate change in NEPA reviews, and provides general guidelines for calculating reasonably foreseeable direct and indirect GHG emissions of proposed actions.

As the CEQ guidance was withdrawn pursuant to Section 3 of Executive Order 13783, the BLM Permanent IM will be rescinded. The BLM will consider issuing new guidance to its offices on approaches for calculating reasonably foreseeable direct and indirect GHG emissions of proposed and related actions.

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## V. Outreach summary

To ensure that Interior is considering the input of all viewpoints affected by the identified actions to reduce the burden on domestic energy, Interior has been, and will continue to, seek from outside entities through various means of public outreach including, but not limited to, working closely with affected stakeholders. In accordance with Administrative Procedure Act requirements, the Department is seeking public input on each proposal to revise or rescind individual energy-related regulatory requirements. The Department is also considering input it receives as part of its regulatory reform efforts through [www.regulations.gov](http://www.regulations.gov) when such input relates to energy-related regulations.



The Department's outreach efforts encompass State, local, and Tribal governments, as well as stakeholders such as the Western Governors' Association, Interstate Mining Compact Commission, natural resource and outdoorsmen groups. To comply with Tribal consultation requirements, Interior will host a separate consultation with official representatives of Tribal governments on matters that substantially affect Tribes, in accordance with the Department's policy on consultation with Tribal governments.

## VI. Conclusion

Interior is aggressively working to put America on track to achieve the President's vision for energy dominance and bring jobs back to communities across the country. Working with state, local and tribal communities, as well as other stakeholders, Secretary Zinke is instituting sweeping reforms to unleash America's energy opportunities (b) (5)

## VII. Attachments

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**Secretary's Orders and Secretary's Memorandum**

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